Assembly of Pro-Democratic NGOs of Belarus

Foundation for Legal Technologies Development

Prospects of the law “On Noncommercial Organizations” elaboration

Materials discussed in civil society

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Contents

Terms of activities of civil society within the context of elaborating a new Law of the Republic of Belarus «On Noncommercial Organizations»

Currently, in Belarus there is a large number of legislative acts (laws, edicts and decrees of the President, resolutions of the Government, of the Ministry of Justice and others) that one way or another manage the activities of noncommercial organizations (NCOs). There are over 200 legal acts and decisions of local authorities, the object of regulation of which contains public associations. Nevertheless, special legal acts cover only some aspects of the activities of NCOs registered in the Republic of Belarus. The main regulation is conducted within legislative acts, spreading their effect on all categories of legal entities: such acts, for example, include the Civil Code, Labour Code, etc. There is a paradoxical situation in this field of public relations: a lot of legal acts have NCOs as their subject of regulation, but at the same time important questions of the NCO activities remain unsettled.

This happens due to the general restrictive direction of legislative activity in the sphere of NCO regulation: the legislator often seeks to limit or to control existing aspects of the NCO activities and not to create or institutionalize any new mechanisms for the functioning of civil society. Exceptions to this general rule are extremely rare. Often, improvement of legislation in the field of legal regulation of NCOs (including public associations, foundations, political parties and religious organizations, trade unions) is associated with giving legal form to illegal or questionable restrictive practices that were previously undertaken by public authorities.

General framework conditions for establishment and operation

Legislative framework of the legal status of NCOs in Belarus forms the Constitution, enshrining the right of citizens to freedom of association, and the Civil Code, defining the types and legal organizational forms of legal entities. There are specific regulatory acts (laws, decrees) adopted for some of the legal organizational forms of NCOs, as well as regulations (instructions) on specific issues of their activities. Among them, there is an essential act, the decision of the Ministry of Justice dated August 30, 2005 No.48, which establishes sample documents and rules for their submission for registration of public associations and political parties, trade unions, as well as their territorial structures and unions of these organizations. However, the deformation of the legal system of Belarus causes distorted optics of legal regulation: the impact of the Constitution and the Civil Code on the development of the NCO sector is less significant than the influence of presidential edicts, and sometimes change of the edict entails a change in the law or even the Civil Code.

The Civil Code classifies all legal entities of Belarus into two types: commercial organizations and NCOs, with the goal of the organization as the criterion of classification. According to Article 46 of the Civil Code, NCOs can be established in order to achieve social, environmental, charitable, cultural,

educational, scientific and management purposes, to protect public health, to develop physical culture and sport, to meet spiritual and other non-material needs of citizens, to protect the rights and lawful interests of citizens and legal entities, to settle disputes and conflicts, to provide legal assistance in accordance with the law and for other purposes aimed at achieving the public good. NCOs can also be created in order to satisfy the material (property) needs of citizens and legal entities in cases envisaged by legislation.

The Code defines a number of legal organizational forms of NCOs:

— **Social and religious organizations (associations)** — voluntary associations of citizens, united in accordance with legislation by their common interests to meet spiritual and other non-material needs;

— **Republican (national) state-public associations** — membership-based NCOs, the purpose of which is to carry out its mandated tasks of national importance;

— **Associations of legal entities (associations and unions)** – NCOs established by agreement between commercial organizations and (or) individual entrepreneurs in order to coordinate their business activities, as well as to represent and protect common property interests, or associations of NCOs;

— **Foundations** – NCOs without membership, founded by persons (a person) and (or) legal entities (legal entity) on the basis of voluntary property contributions, pursuing social, charitable, cultural, educational, promoting the development of physical culture and sports, scientific or other socially useful purposes specified in the charter of a foundation;

— **Institutions** — organizations created by the owner to carry out managerial, social, cultural or other non-commercial functions, and funded by the owner wholly or in part;

— **Consumer cooperatives** — voluntary associations of citizens or citizens and legal entities on the basis of membership in order to satisfy material (property) and other needs of members, carried out by joining the property shares of members.

The list of legal organizational forms of NCOs contained in the Civil Code is not exhaustive. For example, bar associations represent special forms of NCOs, which are not directly stated in the Civil Code.

The main, the most common and familiar form of NCO in Belarus is a public association (public organization). This group includes political parties, trade unions, as well as public associations in the narrow sense (not related to any of the two groups). There is a special Law defining the legal status of NCOs for each of these three sub-categories. These laws are being constantly changed and amended in order to even more regulate activities of these NCOs. Thus, a relatively progressive at the time of its adoption, the Law of 1994 «On Public Associations», as a result of revisions in 1999 and 2005, began to limit NCO activities significantly. A reform of the Law conducted under the motto of «liberalization» in early 2010 did not fundamentally improve its content; on the contrary, it expanded the list of possible grounds for refusing registration of public associations.

It is important to mention that it is public associations that remained in the public mind as «real NCOs» — this is due to the fact that such organizations are known to Belarusians from the Soviet era. For example, an active watch-dog organization «Society for the Preservation of Monuments» was created back

in the 70s of last century under the control of the Soviet regime. In many legislative acts the rules aimed at structures of civil society mention only public associations, but do not say anything about other forms of NCOs. Thus, only associations can be engaged in many forms of social control, express public opinion in a civil court for third parties cases, nominate representatives to election commissions, public boards, etc. Of all the NCOs only public associations can apply for mass events (rallies, marches, demonstrations).

Other forms of NCOs (foundations, institutions, cooperatives) have less of this kind of specific rights and are less familiar to the Belarusians. However, this disadvantage is compensated with less attention of the legislator to regulation of these forms. Thus, until 2005 registration in the form of foundation was a solution for those initiatives which had difficulties in registration in the form of a public association: functioning in the form of foundation, they could not nominate observers to polling stations, but could have state registration as a legal entity, receive donations and conduct events.

Until now, a similar function of haven has been performed by legal organizational form called «Institution.» During the 2010 presidential elections even the political campaign was carried out in this form. This is due to the fact that this form has no special legislation regulation, and this form of NCO came under the general process of liberalization of commercial entities: they still must be registered on application principle, as opposed to foundations and public associations that are created on permitting principle.

All together, the acts of legislation create difficult conditions for the establishment of public associations and foundations, as well as establish a complicated procedure of registration with the possibility of arbitrary denial of registration. In practice, denials of registration of new NCOs in Belarus are very common and often politically motivated. Registration authorities are the bodies of the Ministry of Justice, their decisions may be appealed in court. However, the courts considering such complaints would never admit making unfounded refusal to register and almost always take the side of justice.

A serious obstacle to the registration of new NCOs, including trade unions, religious organizations and political parties, is an obligation to have an office in a nonresidential building, as for national, as well as for the smallest organization. Any NCO or even a small branch of a political party or public association (such offices may be established by three founders and have no legal status) cannot be registered with an address in a private apartment of the founder. This shows a vivid declination of the Belarusian legislation from the generally accepted standards of legal regulation of NCOs: it is generally accepted that the conditions for NCO activities should not be worse than the conditions for the activities of commercial organizations, but Belarusian legislation allows the founders of private unitary companies to have a legal address in a private apartment, which is not available for either form of NCOs.

Specific regulation of certain types and areas of activities

Regulatory restrictions and control over NCOs activities in certain areas of activity is not a common practice in Belarus. Rather, we can say that such restriction and control in human rights, youth policy is put into practice without being formally enshrined.

However, the structures that operate without official registration are under special control of legislation. Prohibition of unregistered public associations, religious organization and foundations, as well as criminal liability for such activities, remains an important factor limiting the activities of unregistered groups. This factor causes the almost clandestine nature of most unregistered initiatives, including political, and their existence is under constant threat of sanctions from the state.

Since the adoption of the Decree of the President dated January 26, 1999, No.2, activities of unions without state registration in Belarus have been prohibited. Later the ban was introduced into the Laws «On Political Parties» and «On Public Associations», and administrative responsibility was established for its violation with possible punishment in the form of a fine or arrest for up to 15 days.

Since 2005, the situation with the prohibition of unregistered groups has deteriorated significantly, because a criminal responsibility for such activities has been introduced. The Law dated 15 December 2005 introduced into the Criminal Code of the Republic of Belarus Article 193^1 «Illegal organization of activities of a public association, religious organization or foundation or participation in those activities». It provided a fine or imprisonment for up to two years for taking part in the activities of a political party, other public association, religious organization or a foundation not having state registration (regardless of the purpose or types of activities of such association). There was Part 2 added to the preexisting Article 193 of the Criminal Code that punishes for activities of a public association violating rights of citizens. This second part increased liability to imprisonment for a term of up to 3 years, if this activity is performed by an unregistered association or party.

As of May 1, 2011 human rights organizations had fixed 18 cases of persons convicted under Article 193^1 during the period of 2006—2009. Acquittals under Article 193^1 have not been fixed. In addition, there are official warnings of the prosecutors being made in order to stop illegal activities without registering with the threat of criminal liability under Article 193^1 against members of the liquidated and non-registered NCOs. Given the practical impossibility to register an NCO which is undesirable for the current government, the availability of this article makes normal exercise of freedom of association in Belarus impossible.

Within the period of 2003—2005, Belarus experienced a wave of forced liquidation of public associations through court decisions. Grounds for liquidation were often not lawful, or based on minor violations of bylaws (like the rules of registration of paper forms). The majority of these NCOs continued to operate despite the fact that the authorities denied them in an attempt to register once again and despite the existence of criminal liability for activities performed by NCOs without registration. Forced liquidation by the Supreme Court was applied for political parties: in 2004 a Labor Party was liquidated, in 2007 — Ecological Green Party «BEZ», as well as the Women's Party «Nadzeya.»

NCOs participation in elections (nomination of candidates, members of the commissions, observers) is regulated by the Electoral Code. The main subject here is political parties, but the authority of other public associations is significant as well. In general, the status of the parties in that area is different only in the way that parties can nominate candidates for deputies, while associations may nominate only members of the commissions and observers.

Getting local donations (from individuals or in the form of sponsorship) is possible for both parties and all other forms of NCOs. At the same time, donations from legal entities (sponsorship) can only be made for the purposes set by a special decree of the president. Financing of parties from abroad or with the participation of foreign funds is prohibited. Getting donations and grants from abroad by other forms of NCOs is made by way of obtaining prior authorization of a special supervisory body — the Department of Humanitarian Affairs, and in some cases — by other state agencies. In practice, this entails frequent violation of these rules by many NCOs, but authorities generally turn a blind eye on these violations (with rare exceptions, associated with obtaining political funding from abroad).

Initiating criminal proceedings against the head of the Human Rights Centre «Viasna» Ales Bialiatski who was accused of tax evasion in especially large amounts, created a fundamentally new situation in this sphere. According to materials of pre-investigation checks by the department of financial investigations of the State Control Committee, during 2009—2010 Bialiatski provided tax authorities with false declarations of income, including those earned abroad. The ground for detention of Bialiatski was the information about his bank accounts, transferred to the Belarusian authorities by judicial authorities of Lithuania and Poland within the framework of bilateral agreements on legal assistance. The governments of these countries said that the Belarusian authorities have abused the system of international procedures and agreements for repressions against its own citizens. As the human rights activists explained, the funds transferred by international organizations to the bank accounts of Bialiatski were not used for his personal purposes, but went on funding of the Human Rights Centre «Viasna», which provided assistance to the repressed citizens of Belarus. Funding for human rights activities had to be transferred into personal bank accounts abroad in connection with the fact that in Belarus «Viasna» is forced to act illegally because of repressive legislation, which aims to prosecute civil society activists and prevent activities of the human rights organizations unwanted by the government. This charge, combined with the arrest on August 4, 2011 of the head of the human rights organization liquidated by the government, may lead to radical changes in law enforcement in this area. It should be noted that the warning about prohibition of actions as part of an unregistered organization and about the possible criminal liability under Article 1931 was given to Bialiatski in February this year.

Until recently, the membership fees have been an important component of the financing of public associations. However, in the beginning of 2010, a new Tax Code established that the amounts of membership fees shall be exempt from taxation only in the amount that is determined by the charter of the organization. Commercial activities are permitted for foundations and institutions, partly for political parties (the sale of paraphernalia), but for other public associations it can only be performed through establishment (or participation in establishment) of a single commercial entity by those public associations.

Dynamics of development of NCOs and political parties

These framework conditions and limitations on types of activities impose a mark on the development of NCOs, including the parties. By virtue of an

unfavorable climate for NCOs activities the grassroots initiatives in Belarus do not become professional, and rarely develop to the level of NCOs. Accordingly, the restrictions on the establishment of NCOs and overall control of civic activity leads to the fact that the NCO sector lacks «bottom feeding»: the local initiatives are set to dissolve soon after reaching the goals, and only some of them (often in the form of one or two leaders) move to a professional public sector.

Number of public associations

	October 30, 2003	January 1, 2004	January 1, 2005	January 1, 2006	March 1, 2007	January 1, 2008	January 1, 2009	January 1, 2010	January 1, 2011	July 1, 2011
Number of newly registered public associations (in the respective year)	94	155	61	85	100	94	—	94	134	51
Total number of registered public associations (as of the date indicated)	2248	2214	2259	2247	2248	2255	2221	2225	2325	2359

According to the Ministry of Justice, as of January 1, 2011 there were 35 professional associations and 22,790 trade union organizations, 2,325 public associations, including 231 international, 675 national and 1,419 local ones registered in Belarus. There have been registered 35,634 organizational bodies of public associations, as well as 25 unions (associations) of public associations, 99 funds (10 international, 4 national and 85 local ones).

As of January 1, 2011 in Belarus there were registered the following entities: sports and sporting public associations — 561, charitable associations – 393, youth associations — 216 (out of them 32 children associations), educational, cultural and recreational, pedagogic public associations – 204, associations uniting the ethnic minorities — 109, associations of war invalids and labor veterans – 83, scientific and technical associations — 79, public associations of activists for protection of nature, preservation of historical and cultural memorials — 67, creative associations — 49, women's associations — 31 and other public associations — 533.

In 2010 the Ministry of Justice and the justice departments of regional executive committees and Minsk city executive committee registered 134 new public associations (5 international, 15 national and 114 local ones), 14 new foundations (1 international and 13 local). Statistics specified by the Ministry of Justice indicates a quantitative increase in the registered public associations. The rate of newly registered public associations in 2010 is the highest annual rate since 2003. Most active ones in 2010 were sports associations, their number

was 49. The remaining associations can be distributed by subject of activities as follows: recreational, amateur — 24; disabled assistance, associations of disabled — 7; national minorities – 5; environmental, sustainable development, agro-ecotourism — 5; professional — 4; promoting healthy lifestyle – 3; animal care – 3; other charitable – 3; consumer protection – 2; women, gender orientation – 2; veterans – 1; others — 17 (youth associations are not singled out, but their number is significant).

With regard to the territory the largest number of public associations has been registered in Minsk — 54 organizations, from the regions — in Brest region (16 organizations). In contrast, in Minsk region only three new organizations appeared, and in Mogilev region — only 5 new associations. During this period, no public association having human rights nature or aiming for democratic changes has been registered (information of Legal Transformation Centre).

15 political parties and 976 local party organizations possess state registration in Belarus, but only few of them are active (revival of parties in 2010 in connection with participation in two election campaigns had rather formal nature). In order for political parties to be registered, there should be at least 1,000 founders representing most regions of the country and the city of Minsk. The grounds for refusal in registration are set out in legislation in such a way that they allow the judicial authorities to refuse registration arbitrary, based on their own interpretation of the alleged violations of the order of establishing a party. As a result, since 2000 in Belarus there has not been registered any new political party. Many groups who wanted to create a political party were denied to be registered by the authorities: the Party of Freedom and Progress had been denied four times in the period of 2003-2009, the authorities also refused to register the Belarusian Christian Democracy Party, the Belarusian Party of Workers and the Belarusian Communist Party of Workers.

In the first half of 2011, the Ministry of Justice of the Republic of Belarus and the chief justice departments of regional executive committees and Minsk city executive committee registered 51 new public associations (6 national and 45 local), 11 new foundations (1 international, 1 republican (national) and 9 local), a trade union organization and an association. During the 6 months of 2001 9 new organizational structures of political parties, 273 new organizational structures of trade unions, 999 new organizational structures of other public associations were recorded and registered. As of July 1, 2011 there have been registered 15 political parties and 985 party organizations, 36 trade unions and 22,856 trade union organizations, 2,359 public associations, including 230 international, 682 national and 1,447 local. There have been recorded and registered 36,300 organizational bodies of public associations, 26 unions (associations), 109 foundations (10 international, 5 national and 94 local).

For the first seven months of 2011, the Ministry of Justice of the Republic of Belarus has registered 7 new public associations, six of which possess republican (national) status (Belarusian Republican Public Association of Doctors of Veterinary Medicine for Non-productive Animals, Belarusian Medical Association «Reproductive Health», Public Association «Belarusian Federation of Athletic Fitness and Bodybuilding,» Republican Public Organization «Belarusian Masters of Weightlifting,» Belarusian Public Association of Astom People, Republican Public Association «White Stork of Hope») and one with international

status (International Public Association «Union of Communists»), as well as two new foundations (International Socio-economic foundation «Idea» and the Republican Foundation «Work and Health»). During the same period, 39 international and national public associations have submitted to the Ministry of Justice of the Republic of Belarus documents with amendments and additions to their charters which have been registered.

However, several political groups act without legal registration (as «the organizing committees for the creation of parties»), not seeing the opportunity to be registered because of their opposition to the acting authorities. Local departments of parties are also faced with the refusals of registration for minor reasons. In general, unregistered political groups have more freedom to maneuver compared with the registered ones: they are not afraid of losing their registration, are not bound by duty to have more than 1,000 members and a certain number of regional offices. Unregistered parties (the «organizing committees»), a priori, are not subject to obtaining financing, allowing them on initially illegal basis to be more freely engaged in fundraising, attracting funding from abroad, often acting at the same time as the organization of civil society or the media, not being a political party.

Practice of registering trade unions shows unfavorable attitude to associations who are not members of the Federation of Trade Unions of Belarus, which supports the government. Lack of freedom of association of workers in unions has repeatedly been the subject of criticism of Belarus with the International Labour Organization, including the reason for carrying out special investigative procedures and sanctions in respect of Belarus.

A new Law «On Noncommercial Organizations» is being elaborated

In Belarus since 2010, upon initiative of the presidential administration, a draft Law «On Noncommercial Organizations» has been elaborated. This new legislative act can affect the interests of all public associations, institutions, political parties, trade unions, religious organizations and other noncommercial organizations. Its elaboration was to be completed by the Ministry of Justice in December 2010 and in March 2011 the draft law should have been presented to Parliament. However, the project was not submitted to the Parliament in due time, and initial draft developed by the Ministry together with the National Centre of Legislation and Legal Research was returned to developers for improvement since it received negative reviews of many influential NCOs, as well as a number of ministries.

During 2010, a number of interested NCOs attempted to influence the content of the future draft law. Common to all these attempts was that interested organizations for most of 2010 did not have access to the concept of the draft which was available for developers. Proposals of religious, social, charitable, environmental, human rights organizations were submitted to the Ministry of Justice. The degree of coordination among these entities in 2010 was low: it was mostly an exchange of information on actions already undertaken during the round tables, sometimes some future action plans were agreed upon. Planning of coordinated joint actions started only at the end of 2010, when the text of the draft developed by the Ministry of Justice was revealed. Attempts to involve

the public advisory board for the Administration of President into the dialogue process on the draft failed.

Based on the available unofficial text of the draft, we can draw the following conclusions. The draft seeks to establish for almost such strict rules and restrictions on registration all forms of NCOs that now exist for public associations: the draft eliminates the possibility for registration of institutions and associations on application principle. The hopes for establishing in the law of a possibility to register NCOs in residential premises of the founder, as now provided for private enterprises, did not justify as well. The accountability of NCOs to government agencies is increasing and getting more complicated, the concept of conflict of interest in the work of NCOs is being introduced. Establishment of institutions by persons who were previously founders of public associations liquidated by a court is prohibited.

Some rules of the draft can be considered as improving the situation of NCOs. They obviously come from proposals to developers of the law sent over the past year. Many NCOs believe that the legislator should focus more not on control and restrictive rules, but on positive provisions that promote the development of NCOs: rules on establishment of public councils under the state bodies, development of the state social order and the status of the organization of social significance. The introduction of the concept of «conflict of interest» refers to the fact that legislator understands many of the problems of NCOs. Such rules create a favorable climate for NCOs, and they should form the core of the new law, if it is indeed aimed at the development of the nonprofit sector.

It can be noted that as proposed, the draft was aimed at «liberation» of civil initiatives within the allowed limits (against previous attempts of total repression or administrative control). As it did not envisage the abolition of existing special laws on public associations, political parties and trade unions, its potential positive impact will in any case be limited.

Belarusian NCOs as a whole have not yet expressed active interest in the work on the draft, they take a passive position. Those NCOs that are interested in active work on the project can be divided into two groups: 1) lobbying for a specific interest of an individual NCO or a group; 2) lobbying for the general interest of the civil sector. In addition, there is a discrepancy on how to promote the interests. Some NCOs believe that the best way would be a «hallway» lobbying, in which highly professional lobbyists will negotiate with the authorities and parliamentarians. Others see the work on the law an issue of common importance, in which many NCOs should be involved, united by the collective goal. The contradictions between these approaches are more tactical, not principled in the substance of advocated interests.

Currently, there has been a distinct pause in the law-making process. Thus, there is time left to promote the interests of NCOs in creating a legal act that is vital for them.

Collective proposals for reforming the law on NCOs

The emergence of the informal text of the draft has stepped up its discussion among civil society organizations. On December 27, 2010 in Minsk upon the initiative of the Assembly of Democratic NGOs and the Legal Transformation Centre an alternate round table discussion on the draft law «On Noncommercial

Organizations» took place. Earlier, on December 23, 2010, the «official» round table discussion on the concept of the draft organized by the Ministry of Justice was held. Only some associations, pro-government parties and NCOs of other forms were invited, and information about the round table was not widespread. Accordingly, a small number of organizations have been able to inform the developers on their opinion about the draft.

Within an alternate round table representatives of public associations and institutions considered the experience of participation of civil society organizations in the work on the draft, as well as discussed further joint action. Participants expressed a desire to develop a joint position on the new law, which would reflect the interests of public associations of various spheres (both registered and unregistered), foundations, institutions, religious organizations, trade unions, political parties, and NCOs of other forms. A comprehensive subject of regulation of the new law has led to involvement in its discussion of various NCOs.

An alternative roundtable was the first public event on the draft law «On Noncommercial Organizations», in which the panelists had an «unofficial» text of a future draft law.

Legal Transformation Centre in conjunction with the Foundation for Development of Legal Technologies has undertaken a number of other actions aimed at raising awareness of civil society with regard to the process of drafting, public involvement in its development, development of strategy for joint activity: letters and recommendations were sent to the Ministry of Justice of the Republic of Belarus, the National Center of Law and Legal Studies, expert meetings were held, a Google group was created in order to exchange information.

In March 2011, noncommercial organizations of Belarus issued a collective appeal on the draft law «On Noncommercial Organizations». The reason for appeal was the likelihood of adoption of this draft in the version, which is not in the interest of the public. The collective appeal was initiated by the specialists of the Legal Transformation Centre and the Assembly of Non-governmental Democratic Organizations on the basis of opinion of noncommercial organizations whose interests are affected by the new draft. Given the findings from the domestic and foreign experts, the civil society organizations of the country have developed an agreed joint approach to the content of the new law.

On March 9, 2011 the collective appeal on the draft law «On Noncommercial Organizations» was passed to the House of Representatives of the National Assembly and the Council of Ministers of the Republic of Belarus. The appeal was signed by 110 noncommercial organizations of various legal forms and activities that represent the Belarusian civil society in its various manifestations — from charities and environmental agencies to the social, human rights, youth, women and other public associations. Business associations and other associations, religious organizations, political parties and trade unions also joined the campaign. In total, they unite in its ranks more than 270 thousand members. This is the most large-scale campaign of lobbying the common interests of the Belarusian civil society organizations.

The initiators of collective appeal expect that in case of adoption of the Law «On Noncommercial Organizations» it will contain the common position of its subjects stated in the collective appeal. In the future to fully involve the public in the work of discussing and improving the draft law the authors

propose to organize discussion events open to all interested organizations, including conducting parliamentary hearings on the issue of legal regulation of noncommercial organizations in the Republic of Belarus before the first reading.

While elaborating the draft law «On Noncommercial Organizations», written proposals from the organizations sent to the Ministry of Justice would be considered. This was announced by Deputy Minister of Justice Igor Tushinski in response to a collective appeal for noncommercial organizations with regard to the development of this draft.

As can be seen from the response, now the Ministry of Justice is working on conceptual provisions of the future draft, taking into account the views expressed by government agencies and noncommercial organizations, as well as the various aspects of relationships that are affected by the law. At the same time they consider equally written proposals of noncommercial organizations and those opinions that were voiced at a private «round table» organized by the Ministry to discuss the conceptual provisions of the draft at the end of last year.

Among other things, the Ministry of Justice is considering such important proposals for noncommercial organizations, as possible extension of declarative principle of registration, and even the possible exception from the law of rules on criminal liability for the activities of unregistered organizations. According to the initiators of collective appeal, the letter of the Ministry of Justice cannot be regarded as a clear statement of intention to reform the law on noncommercial organizations in the interests of these organizations, but it can be interpreted as a readiness for dialogue and communication on the matter.

Conclusions and recommendations

In general, the new Law on NCOs in the architecture system Belarusian law is not needed. But development and adoption of the new Law on NCOs creates an opportunity to influence the legal regulation of NCOs in Belarus. In particular, this point can be used to fill gaps in legislative regulation and to introduce positive norms based on European standards into Belarusian legislation. It should be noted that in the accompanying note to the original version of the draft, the authors have paid much attention to the European experience of the legal regulation of NCOs.

Prospects for significant improvement of framework conditions for the activities of NCOs and political parties are uncertain. Probably the possible aim is not radical changes, but a progressive adjustment of existing legislation and the elimination of bad rules. For example, article 193^1 of the Criminal Code has already been evaluated by the Belarusian authorities as a rule subject to possible adjustments (in 2009, representatives of legislative and executive authorities, as well as of Administration of the President announced about the possible replacement of criminal liability for the activities of unregistered organizations for an administrative one).

It is important to pay attention of the Belarusian lawmakers to the «dialog» rules — those about which there is general consensus that they should be in the Belarusian legal system, but there is no vision of the legislator on how they should look like (the social order, the ombudsman, the transition to a proportional electoral system, other rules of the electoral law). It is important to note that the talks of the imminent introduction of proportional electoral system

are so far unfounded: such reform is likely to require changes to the rules of the Constitution about the recall of deputies, which is unlikely. In general, the reform of the Electoral Code should be considered as a separate issue, isolated from the problem of the legal status of political parties and NCOs.

The state will pay particular attention to legal regulation of new forms of NCOs: foundations, institutions and and others. Moreover, as these forms often play the role of «safe haven» for social initiatives, it is essential to promote the implementation of legislative regulation in this area based on European standards both for public associations, and in relation to other forms of NGOs. This can be facilitated by active interaction with the Belarusian lawmaking authorities and those non-parliamentary institutions, which really affect the legislative process: appropriate departments of the Administration of the President, the National Centre of Law and Legal Studies, Constitutional and Supreme Court, the Ministry of Justice and other departments.

Draft dd. December 2010

Draft

LAW OF THE REPUBLIC OF BELARUS
On Non-Commercial Organizations[1]

Adopted by the House of Representatives
Approved by the Council of the Republic

This Law shall define the legal status, procedures for setting up, carrying out activities, reorganization and liquidation of non-commercial organizations; the formation and utilization of the NCO property; the basis for managing not-for-profit organizations and the tentative procedures for the provision of support to NCO by government agencies, local authorities and bodies of local self-governance.

Chapter 1
GENERAL PROVISIONS

Article 1. The Field of Application of This Law

This Law shall be applied to all not-for-profit organizations established on the territory of the Republic of Belarus, unless this article and other legal acts stipulate.

This Law shall not govern consumer cooperatives and government-run entities.

Specific features pertaining to the legal status, establishment, activities, reorganization and liquidation, and specific organizational and legal forms of non-commercial organizations, which are not regulated by this Law, shall be regulated by other legislative acts.

Article 2. The Definition of a Non-Commercial Organization

A non-commercial organization shall be construed as an entity whose main purpose of activities does not stipulate generation of profit and its subsequent distribution among the participants.

Article 3. The Goals of the Non-Commercial Organization Activities

Non-commercial organizations may be established for the purpose of pursuing social, environmental, charitable, cultural, educational, scientific and managerial goals, as well as for the protection of health of citizens, development of physical culture and sports, satisfying spiritual and other intangible needs and interests of citizens; protection of rights and legitimate interests of physical persons and legal entities; resolution of disputes and conflicts, and provision of

[1] *Unofficial Translation by International Center for Not-For-profit Law (ICNL), 2010*

legal assistance — in compliance with the legislation — and for other purposes aimed at attaining public good.

The goals of the NCO activities shall be listed in the constituent documents of non-commercial organizations.

Article 4. Organizational and Legal Forms of Non-Commercial Organizations

Non-commercial organizations may be established in the following organizational and legal forms: a consumer cooperative, a public association (organization), a national state and public association, various organizational structures of the latter including a legal entity, a foundation, an institution, a state association, a chamber of commerce, the Belarus notary association, associations of legal entities and/or individual entrepreneurs (associations and unions), owners' partnerships, gardening associations, a standing mediation court, a permanent international arbitration court, and in other forms stipulated in the legislative acts.

Article 5. The Legal Status of a Non-Commercial Organization

A non-commercial organization shall be construed as a legal entity as of the moment of its state registration in accordance with the procedure established by the legislative acts. It may own, manage and run its own assets, and it shall be liable for its obligations with the said assets; it may acquire and possess property and non-property rights, be liable, and act as a plaintiff and a respondent in the court of law.

A non-commercial organization shall have its own independent bank account and maintain its statement of assets and liabilities.

A non-commercial organization may be set up for an unrestricted period of time, unless the NCO's constituent documents stipulate a different arrangement.

A non-commercial organization shall be eligible for opening bank accounts on the territory of the Republic of Belarus and abroad — in accordance with the established procedure.

A non-commercial organization shall have a corporate seal bearing full name of this NCO in the Russian language and/or the Belarusian language.

A non-commercial organization may have its own stamps and stationary bearing its name.

Article 6. Symbols of Non-Commercial Organizations

A non-commercial organization may have its own flag, emblem, badge or identifying signs and other symbols (hereinafter – symbols), (unless the current Law stipulates otherwise), which may be established in accordance with the current legislation and the NCO's constituent documents.

Any usage of the state symbols of the Republic of Belarus and/or symbols of an existing foreign state, or a state that used to exist in the past, as symbols of a non-commercial organization, shall not be allowed.

Legal protection of an NCO symbols on the territory of the Republic of Belarus shall be provided on the basis of the organization's state registration

following the procedure established by the legislation pertaining to heraldry symbols and the laws regulating specific requirements of setting up and carrying out activities of certain types of NCOs organizational and legal forms.

The right to use symbols is protected by the state and confirmed by special certificates confirming the state registration of symbols.

Article 7. Name and Location of a Non-Commercial Organization

A non-commercial organization shall have its own name containing a reference to its organizational and legal form and the type of activities it is engaged in.

A non-commercial organization shall possess an exclusive right for the use of its name.

The location of a non-commercial organization shall be defined by the location of its standing executive body, and, in the event of an absence of a standing executive body, by the location of another governing body, or an individual authorized to act on behalf of this legal entity without a special power of attorney.

The name and location of a non-commercial organization shall be specified in its constituent documentation.

Article 8. Subsidiaries and Representative Offices of a Non-Commercial Organization

A non-commercial organization (except for public associations) may set up subsidiaries and open representative offices on the territory of the Republic of Belarus in compliance with the existing legislation.

A representative office shall be construed as a separate subdivision of a non-commercial organization located outside of the main organization's place of business and engaged in protecting and representing the NCO's interests, entering into business transactions and other legally relevant actions on behalf of the non-commercial organization.

A subsidiary is a separate subdivision of a non-commercial organization located outside of the main organization's place of business and carrying out all or part of the NCO's functions including the one of a representative office.

Neither representative offices nor subsidiaries can be construed as separate legal entities. They may get property from the non-commercial organization that established them, and they can function on the basis of the regulations adopted by the parent NCO.

The parent NCO's Charter must contain references pertaining to its representative offices and subsidiaries.

Representative offices and subsidiaries of a non-commercial organization shall have their own names containing references to the name of the parent NCO and to the fact that they are its representative offices or subsidiaries.

Executives of representative offices and subsidiaries shall be appointed by the parent NCO, and shall act on the basis of the power of attorney signed by the NCO's CEO (another person authorized by constituent documents) on behalf of the non-commercial organization. The said power of attorney shall be duly validated by the corporate seal of the NCO.

The non-commercial organization shall come to an agreement with local executive and regulatory bodies regarding the location of its subsidiary and/or representative office on the territory of corresponding administrative and territorial jurisdiction.

A representative office or a subsidiary of a non-commercial organization shall be regarded established as of the moment of the state registration of amendments and/or addenda to the Charter of this NCO pertaining to the said representative office or subsidiary.

Registration with the internal revenue services of representative offices and subsidiaries of non-commercial organizations, which, in compliance with the legislation, have tax obligations of their parent NCOs, shall be carried out in accordance with the tax laws.

Registration of representative offices and subsidiaries of non-commercial organizations bearing, in compliance with the legislation, obligations of their parent NCOs, with the government bodies of statistics, agencies of the social protection Fund of the Ministry of Labor and Social protection of the Republic of Belarus, and with *Belgosstrakh*, the Belarusian national unitary insurance enterprise, shall be effectuated pursuant to the notification submitted by these NCOs regarding setting up such separate subdivisions.

Responsibility for the activities of subsidiaries and representative offices shall be borne by their parent non-commercial organizations.

Article 9. Organizational Structures of Non-Commercial Organizations

Public associations and republican state/public associations may, and, in some cases specified in the legislative acts, are mandated to create their organizational structures, which are construed as their structural subdivisions set up in accordance with these NCO's charters, following territorial or other principles, and acting on the basis of constituent documents of their parent non-commercial organizations.

NCO's organizational structures, in compliance with the NCO's Charter, may be established in the following forms:

- a separate structural subdivision with the rights of a legal entity;
- a separate structural subdivision without the rights of a legal entity.

Organizational structure of a national state/public association, in accordance with the charter of such association, may be established in various forms (including that of a legal entity) except for those specified in the second part of this chapter.

An organizational structure of a commercial organization possessing legal personality shall have a separate statement of assets and liabilities, its own settlement bank account and other accounts with banking and other crediting and financial institutions.

An organizational structure, set up as a legal entity, and an organizational structure that is vested with the rights of a legal entity shall not be liable for the obligations of their parent non-commercial organization, while the latter shall be

held liable for the obligations of its organizational structures to the full extent, unless legislative acts stipulate otherwise.

An NCO's organizational subdivision shall have its own name containing a reference to the name of the parent NCO and the fact that the said subdivision is the NCO's organizational structure.

NCO's organizational subdivisions shall be subject to the state registration and shall be accounted for in compliance with the procedure prescribed by legislative acts regulating the legal status, establishment, activities, reorganization and liquidation of public associations (organizations) and national state/public associations.

Registration with taxation authorities of the NCO's structural subdivisions acting as legal entities and, in accordance with the relevant legislation, carrying out obligations of their parent NCOs, shall be effectuated in compliance with the internal revenue legislation.

Registration of NCO's subdivisions, which possess legal personality and bear, in compliance with the legislation, obligations of their parent NCOs, with the government bodies of statistics, agencies of the social protection Fund of the Ministry of Labor and Social protection of the Republic of Belarus, and with *Belgosstrakh*, the Belarusian national unitary insurance enterprise, shall be effectuated pursuant to the notification submitted by these NCOs regarding setting up such separate subdivisions.

Chapter 2
ORGANIZATIONAL AND LEGAL TYPES OF NON-COMMERCIAL ORGANIZATIONS

Article 10. Consumer Cooperative

A consumer cooperative is defined as a voluntary association of citizens or citizens and legal entities on a membership basis for the purpose of satisfying the participants' material (property) and other needs by way of pooling of property contributions by its members.

Consumer cooperatives may be set up as housing, housing/construction, garage, gasification and other cooperatives allowed by effective legislation.

The income and profit obtained by a consumer cooperative may not be distributed among its members.

Article 11. Public Association (Organization)

A public association (organization) is defined as a voluntary association of citizens, who have united under the procedure established by law on the basis of unity of interests for the purpose of satisfying their intellectual/spiritual or other nonmaterial needs.

Public associations (organizations) may be set up as political parties, trade unions, religious organizations and other public associations (organizations).

Members of public associations (organizations) shall not retain their rights to the property they transfer to the ownership of such associations or organizations, membership dues included. Members of public associations (organizations) shall not be liable for any obligations of their public associations (organizations), nor shall public associations (organizations) be liable for any obligations of their members.

Article 12. Republican (national) State-Public Association

A republican (national) state-public association is defined as a non-commercial organization established for the accomplishment of objectives of national importance.

A republican (national) state-public association is established by decision of the founders or as a result of reorganization of an existing non-commercial organization in the form of a public association on conditions determined by the President of the Republic of Belarus or, on his instruction, by the Government of the Republic of Belarus.

Article 13. Organizational Structure of a Republican (national) State-Public Association

If so provided for by the legislative act regulating its establishment, the organizational structure of a republican (national) state-public association set up as a legal entity shall be an independent organizational and legal type of a legal entity.

Property of the organizational structure of a republican (national) state-public association shall be assigned to it on an operative management basis.

The organizational structure of a republican (national) state-public association shall be liable for its obligations with all the property at its disposal. If it proves insufficient, then the republican (national) state-public association shall be liable for the obligations of its organizational structure.

Article 14. Foundation

A foundation is defined as a non-membership non-commercial organization established by a citizen (citizens) and/or a legal entity (legal entities) on the basis of voluntary property contributions for attaining social, charitable, cultural, educational or scientific goals, promoting physical culture and sports or pursuing other socially beneficial objectives referred to in its charter.

A foundation's governing bodies include the board (council), directorate (director), and board of trustees. Persons elected to the board of trustees may not be elected to the board (council) or appointed directorate members (director) of the foundation. The charter of a foundation may also provide for other governing bodies.

Article 15. Institution

An institution is defined as an organization set up by the owner of its property for the exercise of managerial, socio-cultural or other functions of noncommercial nature and funded by the owner in part or in full.

Depending on the form of ownership, institutions are divided into state- or privately owned.

In cases determined by the President of the Republic of Belarus, state-owned institutions may be granted powers of state authority.

Unless otherwise provided in legislative acts, an institution shall have no right to alienate or otherwise dispose of the property it was assigned or which it purchased with funds it had been allotted.

Property of a foundation shall be assigned to it on the day-to-day management basis unless otherwise determined by the President of the Republic of Belarus.

The owner of a private institution's property may not be one of the following persons:

A physical person or legal entity that was the founder of a non-commercial organization liquidated by decision of a court in connection with gross or repeated violations of legislative acts;

A citizen of Belarus having an unexpunged or unexpired record of conviction in a deliberate crime;

A foreign national or a person without citizenship, convicted in the Republic of Belarus or other country for committing a deliberate crime as provided by the Criminal Code of the Republic of Belarus and whose conviction remains unexpunged or unexpired.

Article 16. Associations of Legal Entities and/or Individual Entrepreneurs (Associations and Unions)

For purposes of coordinating their entrepreneurial activity as well as representing and protecting their own property interests, commercial organizations and /or individual entrepreneurs may, by mutual agreement, unite into associations or unions – not-commercial organizations.

Public and other non-commercial organizations may unite into associations or unions on a voluntary basis.

In cases provided for by legislative acts, local councils of deputies may set up unions in the form of associations of local councils of deputies. Associations of local councils of deputies and the Minsk Municipal Council of Deputies may create a national association of local councils of deputies.

An association (union) shall not be liable for the obligations of its members. The members of the association (union) shall bear subsidiary liability for its obligations to the extent and under the procedure provided for by its charter.

Article 17. Owners Partnership

An owners partnership is defined as an association of owners of residential and/or nonresidential premises that is set up to ensure safekeeping, upkeep and use a real property in joint tenancy as well as for purposes provided for by applicable legislation and the partnership's charter.

The property of an owners partnership shall be formed, in compliance with its charter, from admission and other fees, compulsory payments by its members, income from the partnership's business activity, and other revenues.

Article 18. Gardening Association

A gardening association is defined as a non-commercial organization operating as a membership of individuals who use plots of land provided to them for collective gardening for the purpose of growing fruit, small-fruit, vegetable, and other agricultural crops and ornamental plants, creating conditions for rest and recreation, and satisfying other needs of the association's members.

The association's members shall bear subsidiary liability for its obligations to the extent of the outstanding part of their additional contributions.

Any losses which the association may incur in the course of its activity shall be covered at the expense of the members' additional contributions in accordance with the decision of the general meeting of the members or the meeting of duly empowered members.

Article 19. Standing Court of Mediation

A standing court of mediation is defined as a non-commercial organization set up for dispute resolution and which is not a part of the judiciary system of the Republic of Belarus.

A standing court of mediation shall conduct its activity in accordance with its rules, which determine the organization and procedure of its activity, the rules of mediation, and the list of mediation judges.

Article 20. Permanent International Court of Arbitration

A permanent international court of arbitration is defined as a permanent organization of arbitration (mediation).

The permanent international court of arbitration shall be a non-governmental non-commercial organization conducting its activity for compensation.

The permanent international court of arbitration shall be set up as a non-commercial organization designed primarily to promote foreign economic ties with foreign legal entities and individual entrepreneurs.

Article 21. Chamber of Commerce and Industry

A chamber of commerce and industry is defined as a voluntary association of legal entities and individual entrepreneurs, a non-governmental non-commercial organization set up to further entrepreneurial activity in the Republic of Belarus, integrate its economy in the world economic system, and create favorable conditions for the strengthening of the ties of its subjects of business activity with their partners abroad.

The chamber of commerce and industry shall be set up on the basis of voluntary association of its founders on the initiative of at least 15 founders and by consent of the President of the Republic of Belarus.

Article 22. Belarus Notary Association

A Belarus Notary Association is a national non-commercial organization, a professional association of private notaries based on compulsory membership.

The Belarus Notary Association shall conduct its activity on the basis of self-administration.

Article 23. State Associations

A state association (a concern, or a production or scientific-production association) is defined as an association of state-run legal entities, or state-run and other legal entities, or state-run and other legal entities and individual entrepreneurs, which is set up by decision of the President of the Republic of Belarus, the Government of the Republic of Belarus, or, on their instruction (with their permission), by national government bodies, or by decision of local government and self-government bodies. State associations shall be non-commercial organizations, with the exception of cases where they are declared commercial organizations in compliance with the effective legislation.

A state association shall be subordinate to the Government of the Republic of Belarus, or a national government body, or a local government and self-government body, or a state-run organization which exercises individual functions of a national government body.

By decision of the government body (public official) to create the state association, or a body duly empowered by such government body or public official, a state association may include state-run unitary enterprises and/or government agencies, as well as other organizations and individual entrepreneurs – on a voluntary basis and on the terms and conditions set forth in the charter of the state association. Legal entities may join a state association in compliance with applicable legislation.

The assets of a state association shall be government property and belong to the state association by right of economic jurisdiction or right of operative management.

The assets of members of the state association shall not make up a part of its assets.

Chapter 3
ESTABLISHMENT OF A NON-COMMERCIAL ORGANIZATION

Article 24. Establishment of a Non-Commercial Organization

A non-commercial organization can be established as a result of setting up a new entity or as a result of reorganization of an existing commercial or non-commercial entity.

Establishment of a non-commercial organization as a result of setting up a new entity shall be carried out pursuant to the decision adopted by its founder (s).

Article 25. Constituent Documents of a Non-Commercial Organization

The founding document of a non-commercial organization is its Charter adopted by the founder (founders, property owners, participants, members).

Provisions of the NCO Charter shall be regarded as binding for this particular non-commercial organization.

A Charter of a NCO shall contain the following:

- full and contracted name of the NCO;
- the subject matter, goals, purposes and methods of carrying out activities of this NCO;
- information regarding subsidiaries and representative offices, if such are planned to be established;
- the procedure for managing activities of the NCO;
- the sources of formation of the NCO's property;
- the procedure for introducing amendments and/or addenda to the constituent documents of the NCO;
- the procedure for reorganization and liquidation of the non-commercial organization, and the ways of utilization of the assets remaining after the NCO's liquidation;
- the location of the non-commercial organization;
- provisions, stipulated by legislative acts, that govern specific features related to the establishment and activities of certain organizational and legal forms of non-commercial organizations.

Besides the provisions specified in part 3 of this Article, a Charter of a private institution shall also contain the following:

- types of activities;
- rights and duties of the private institution's property owner;
- the procedure for the formation of property of the private institution;
- the procedure for financing the private institution's property by the property owner.

A charter of a non-commercial organization may contain other provisions related to the establishment and activities of the NCO, provided they do not run counter to the existing legislation.

Article 26. Bodies of Registration

The state registration of non-commercial organizations and of the amendments and/or addenda to be introduced into their charters shall be exercised by the following agencies:

The Ministry of Justice of the Republic of Belarus shall be in charge of the registration of political parties, national trade unions, international and national public associations; their unions (associations), unions (associations) of those engaged in a specific kind of sport (s) created with the participation of a public association (public associations), national state/public associations, national and international foundations created on the territory of the Republic of Belarus, organizational subdivisions of international public associations established on the territory of foreign states, chambers of commerce, the Belarus notary

association, state associations which are non-commercial organizations, standing mediation courts and permanent international arbitration courts.

The main directorates of justice with regional (oblast) and the City of Minsk executive committees shall be in charge of the registration of territorial and local trade unions, local public associations, their unions (associations), local foundations, organizational structures of national and state/public associations established as legal entities.

The republican government agency on religious affairs shall be in charge of registering religious communities (hereinafter – religious associations, unless other form is specified), monasteries and monastic communities, religious brotherhoods and sisterhoods, religious missions and religious education establishments set up pursuant to a decision adopted by the governing body of a religious association.

Regional (oblast) and municipal executive committees of Brest, Vitebsk, Gomel, Grodno, Minsk and Mogilev shall be in charge of registering non-commercial organizations not mentioned in paragraphs 2—4 of this Article. Regional executive committees may delegate a part of their authority to exercise the state registration of NCOs to other local executive and regulatory bodies; the aforementioned municipal committees may delegate their authority to respective district administrations within their jurisdictions.

Article 27. State Registration of Non-Commercial Organizations

A non-commercial organization shall be subject to the state registration.

The state registration of non-commercial organizations (with the exception of national state/public associations, state-run associations, amendments and/or addenda to their charters) shall be carried out following the procedure established by this Law and other legislative acts regulating specific features of setting up and managing activities of certain organizational and legal forms of non-commercial organizations.

The state registration of national state/public associations and state-run associations shall be carried out in accordance with the procedure established by the legislative acts regulating issues pertaining to the establishment and activities of NCOs.

For the purpose of the state registration of a NCO, the following documents must be submitted to the registration authority:

- an application for the state registration compiled in the form established by the Ministry of Justice of the Republic of Belarus;
- two copies of the charter without the notary authentication and an electronic copy of the charter (in. doc or. rtf format);
- the original or a copy of the payment receipt confirming the payment of the state duty;
- the original certificate of the state registration of an organization undergoing reorganization – in the event of an NCO reorganization by way of merging or splitting organizations;
- a document confirming the presence of legitimate address of the NCO;

- other documents required by the legislative acts regulating specific requirements of setting up and carrying out activities of certain types of NCOs organizational and legal forms.

A registration agency shall not be entitled to requesting any other documents except the ones stipulated by this Law and other legislative acts.

Foreign organizations' documents shall be submitted to a registration agency along with their legalization or apostil, unless international agreements of the Republic of Belarus stipulate otherwise. Said documents shall also be accompanied by their notarized translation into Russian or Belarusian.

The term of processing the application for the state registration of a non-commercial organization and other documents submitted for the state registration shall commence on the date of submission all of the documents required by the legislation.

In the event of a failure to submit all of the documents required by the legislation, the registration authority within ten days upon the submission of the application for the state registration shall return the application for the state registration of the NCO and other documents to the applicant without processing them.

Amendments and/or addenda introduced into constituent documents of non-commercial organizations shall become valid for any third party as of the moment of their state registration, and, in some cases stipulated by legislative acts – as of the moment the registration authority has been notified about such amendments and/or addenda.

Amendments and/or addenda introduced into constituent documents of national state/public associations shall become valid for any third party as of the moment of the inurement of legal and regulatory acts confirming such amendments and/or addenda.

For the purpose of the state registration of amendments and/or addenda to the charter of an NCO, the following documents must be submitted to the registration authority:

- an application for the state registration of amendments and/or addenda to the charter compiled in the form established by the Ministry of Justice of the Republic of Belarus;
- two copies of amendments and/or addenda submitted as annexes to the charter without notarization; their electronic versions (in. doc or. rtf format). Per the NCO's choice, a redacted version of the existing charter may also be submitted;
- the original certificate of the state registration – in the event of changing the name of the NCO; the original of the state registration of the organization that is being merged – in the event of its reorganization by way of a merger; the original certificate of the state registration – in the event of the reorganization by way of conversion;
- the original or a copy of the payment receipt confirming the payment of the state duty;
- other documents required by the legislative acts regulating specific requirements of setting up and carrying out activities of certain types of NCOs organizational and legal forms.

The state registration of amendments and/or addenda to the constituent documents of a non-commercial organization shall be effectuated following the same procedure and within the same timeframe as the state registration of a non-commercial organization.

A state duty shall be charged for the state registration of a non-commercial organization and for the registration of amendments and/or addenda to the charter of a non-commercial organization following the procedure and in the amount specified in the Tax Code of the Republic of Belarus, unless legislative acts stipulate otherwise.

Pending the evaluation of the documentation submitted for the state registration of a non-commercial organization or amendments and/or addenda to the NCO charter, within a period of one month as of the moment all of the documents required by the legislation have been submitted to the registration authority, the latter shall make one of the following decisions:

- to allow the state registration of the NCO or amendments and/or addenda to the charter of the NCO;
- to deny the state registration of the NCO or amendments and/or addenda to the charter of the NCO;

An entry regarding the state registration of a non-commercial organization shall be made into the Unified State Register of legal entities and individual entrepreneurs by the registration authority on the day of adopting a decision pertaining to the state registration following the procedure prescribed by the legislation.

Within five days upon making an entry regarding the state registration in to the Unified Register of legal entities and individual entrepreneurs, the registration authority shall issue a document confirming the registration with the internal services agencies, government statistics agency, agencies of the Social Protection Fund of the Ministry of Labor and Social Protection of the Republic of Belarus, and with Belgorstrakh, the Byelorussian national unitary insurance enterprise – in accordance with the procedure established by the Council of Ministers of the Republic of Belarus.

Article 28. Suspension of the Government Registration of a Non-Commercial Organization, and of Amendments and/or Addenda to the Charter of a Non-Commercial Organization

Within the period the registration authority evaluates the submitted documentation, the said authority may suspend the state registration of a non-commercial organization, of changes and/or addenda to the charter of a non-commercial organization for the period of up to one month in connection with the presence of eliminable defects in the documentation submitted for registration.

Legislative acts may also establish other grounds for suspending the state registration of a non-commercial organization and of changes and/or addenda to the charter of a non-commercial organization.

Within the period of five days upon the suspension of the state registration of a non-commercial organization and of changes and/or addenda to the charter

of a non-commercial organization, the registration authority shall send a written notification regarding the adopted decision to the governing body of the non-commercial organization specifying the grounds for the suspension.

In the event when the non-commercial organization has corrected the flaws that were referred to as the grounds for suspending the state registration of a non-commercial organization and of changes and/or addenda to the charter of a non-commercial organization, the registration authority shall review the submitted documents in accordance with the procedure established by this Law.

Article 29. Denial of the State Registration of a Non-Commercial Organization and of Changes and/or Addenda to the Charter of a Non-Commercial Organization

The decision to deny the state registration of a non-commercial organization and of changes and/or addenda to the charter of a non-commercial organization shall be taken in the event of:

- violation of the established procedure for setting up a non-commercial organization and of the procedure for introducing amendments and/or addenda to the charter of a NCO – if the said violation is such that it cannot be remedied;
- non-compliance of the constituent documents with the requirements of the legislation;
- submission by a non-commercial organization of other documents and/or data that fail to comply with the requirements of the legislation, including counterfeit, forged and invalid documents;
- failure on the part of the non-commercial organization to correct within the period of one month the deficiencies that constituted the grounds for the suspension of the state registration of the non-commercial organization and of changes and/or addenda to the charter of the non-commercial organization.

Legislative acts may also establish other grounds for denying the state registration of a non-commercial organization and of changes and/or addenda to the charter of a non-commercial organization.

Within the period of five days upon taking the decision to deny the state registration of the non-commercial organization and of changes and/or addenda to the charter of the non-commercial organization, the registration authority shall send a written notification regarding the adopted decision to the governing body of the non-commercial organization or the applicants acting on the NCO's behalf, specifying the grounds for the denial.

The decision to deny the state registration of a non-commercial organization and of changes and/or addenda to the charter of a non-commercial organization may be appealed against within the period of one month since the notification of the denial in accordance with the following procedure:

- a decision by the Ministry of Justice of the Republic of Belarus – in the Supreme Court of the Republic of Belarus;
- a decision of the national agency on the affairs of religions and nationalities – in the Supreme Court of the Republic of Belarus;

- decisions by the main directorates of justice with regional (oblast) and the City of Minsk executive committees – in the regional (oblast) and City of Minsk courts respectively;
- decisions of regional (oblast) and municipal executive committees of Brest, Vitebsk, Gomel, Grodno, Minsk and Mogilev, and, in the event a part of authority regarding the state registration has been delegated to other local executive and regulatory bodies and corresponding district administrations in the aforementioned cities, — in the court of law located in the area of the relevant executive and regulatory body or the corresponding district administration of the aforementioned cities.

A denial of the state registration of a non-commercial organization or amendments and/or addenda to the NCO charter should not be construed as an obstacle for a new submission of documentation for the state registration. A repeat submission of an application for the state registration of a non-commercial organization or amendments and/or addenda to the NCO charter, and adoption of a decision regarding the said application shall be carried out in compliance with the procedure provided by this Law.

A failure to effectuate the state registration of a non-commercial organization or amendments and/or addenda to the NCO charter in compliance with this Law may be appealed against in accordance with the procedure specified in part 4 of this Article.

Article 30. Recognition by the Court of the State Registration of Non-Commercial Organization Invalidated, Cancellation by the Registering Body of the State Registration of Amendments and/or Addenda to the Charter of a Non-Commercial Organization

The activity of the non-commercial organizations, for which the state registration has been made on the basis of deliberately false information, which should be construed as submission of fabricated data (information), presentation of counterfeit documents regarding facts that are essential for decision-making in regard of the state registration, shall be regarded illegal and shall be prohibited, and their state registration shall be revoked pursuant to the decision of the court of law.

In the event when there have been found grounds for invalidating the state registration of a non-commercial organization, the agencies of the Committee of State Control, the Prosecutor's office, and the agencies of internal affairs, the Committee for the State Security, the Ministry of Revenues and Taxes and the registration authorities and other authorized agencies within their jurisdiction shall submit a claim to the court of law requesting that the state registration be invalidated and seeking the recovery of revenues obtained by the non-commercial organization in favour of the local budget.

The claim seeking cancellation of the state registration of non-commercial organizations shall be submitted in accordance with the following procedure:

In the event when the registration was effectuated:

by the Ministry of Justice of the Republic of Belarus, the claim shall be submitted to the Supreme Court of the Republic of Belarus;

by the central governmental authority on religions and nationalities, the claim shall be submitted to the Supreme Court of the Republic of Belarus;

by the Main Directorates of Justice of oblast (municipal for Minsk) executive committees, the claim shall be submitted to the oblast courts, and Minsk municipal court servicing the area where the NCOs were registered;

the oblast executive committees, Brest, Vitebsk, Gomel, Grodno, Minsk, Mogilev municipal executive committees, and in the case of delegation of authority for the state registration of non-commercial organizations to other local executive and administrative authorities and district administrations of the aforementioned cities, the claim shall be submitted to the court at the location of the local executive and administrative agency (respective district administration in the aforementioned cities).

The state registration of amendments and/or addenda to the charter of a non-commercial organization that has been made on the basis of deliberately false information, which shall be construed as information specified in part one hereof, shall be invalidated on the basis of the decision of the registration authority.

The registration authority, within five business days from the date of the decision to invalidate the state registration of amendments and/or addenda to the charter of a non-commercial organization, shall inform the non-commercial organization of its decision, supported by the substantiation of the cancellation.

Invalidation of the state registration of amendments and/or addenda to the charter of the non-commercial organization may not be regarded an obstacle for a repeat submission of documents for the state registration of amendments and/or addenda to the charter of the NCO, provided the underlying reasons for the cancellation have been remedied.

Chapter 4
ACTIVITIES OF A NON-COMMERCIAL ORGANIZATION

Article 31. Types of Activities of a Non-Commercial Organization

A non-commercial organization may carry out activities that are not prohibited by the legislation of the Republic of Belarus and that are consistent with the statutory goals of the NCO's activity, as provided in its founding documents.

Legislative acts may impose restrictions on exercising certain types of activities by non-commercial organizations of certain legal and organizational forms.

Certain types of activities may be exercised by NCOs only on the basis of special permits (licenses). A list of these types of activities is specified by legislative acts.

A non-commercial organization may engage in business activities only insofar as they serve the attainment of goals for which it was created. Lectures,

seminars, conferences, exhibitions, concerts, and sports events carried out by NCOs for their statutory purposes shall not be regarded entrepreneurial activities.

Fulfillment of work, provision of services and delivery of goods for the government needs on a contractual basis may be exercised by non-commercial organizations without establishing commercial organizations and/or participating in the activities of the latter.

Profits derived from the activities mentioned in parts four and five of this Article shall be directed towards attaining the constituent purposes of the NCO and shall not be distributed among the founders (participants, members) of non-commercial organizations. The use of funds for charitable purposes by non-commercial organizations shall be allowed.

For the purposes provided by the constituent documents, a non-commercial organization may establish other non-commercial and (or) commercial organizations and join associations and (or) unions.

Article 32. Property of a Non-Commercial Organization

A non-commercial organization may own or manage any property required to ensure its constituent activity, except for objects that, in accordance with the legislation, can only be in state ownership.

In the cases stipulated by legislative acts, the property can be owned by a NCO by the right of the economic management of the state property that was transferred to the NCO.

The sources of formation of an NCO's assets in monetary units and in kind may be as follows:

regular and non-recurring contributions from the founders (the property owner, participants, members);

voluntary property contributions and donations;

income derived from implementing activities specified in parts four and five of Article 31 of this Law;

other revenues allowed by the law.

Legislative acts may impose restrictions on the sources of income of certain types of NCOs.

The procedure of regular contributions provided by founders (the property owner, participants, and members) is determined by constituent documents of a non-commercial organization. Upon liquidation or reorganization of the NCO, the aforementioned contributions made by founders (participants, members) of non-commercial organizations shall not be refundable except in cases stipulated by legislative acts.

The amount of a foundation's expenses on its employees' salaries shall be established by the founder (s) of the foundation. This amount may not exceed 20% of all of the foundation's expenses over the reporting period.

The profit acquired by a non-commercial organization shall not be subject to distribution among the founders (participants, members) of the NCO.

Article 33. Conflict of Interest

Any transactions between a non-commercial organization and any interested party related to management of the NCO's assets shall imply the presence of a conflict of interests.

Any official of a non-commercial organization, as well as members of its governing bodies, and persons who, due to their relationship with the non-commercial organization, may impact the NCO's management of its assets, and who enter into transactions with the non-commercial organization personally or via proxy, shall be perceived an interested party.

Conflict of interest is also recognized, when the NCO enters into transactions with relatives of the interested individuals mentioned in part two of this Article.

A transaction that might imply a conflict of interest must be approved by the authorized body of the non-commercial organization. The interested party must inform the authorized body of the NCO regarding such transaction prior to its conclusion.

The interested party shall be liable for the compensation of all losses incurred by the non-commercial organization as a result of the transaction concluded under circumstances involving a conflict of interest – in the event when the transaction was not approved by the authorized body. In addition to the compensation of damages, such party shall be obliged to return the NCO all of the revenue acquired by this party as a result of the conclusion of said transaction.

In the event when the losses emerged as a result of actions of several interested parties, they shall be jointly liable vis-à-vis the NCO.

Chapter 5
MANAGEMENT OF A NON-COMMERCIAL ORGANIZATION

Article 34. The Fundamentals of Management of a Non-Commercial Organization

The structure, competence, procedure for establishment of NCO governing bodies, their tenure and the procedure of adopting decisions on behalf of NCO shall be specified in constituent documents of a non-commercial organization in accordance with this Law and other legislative acts.

Other legislative acts may provide for the establishment of NCO governing bodies that are not stipulated in this Law, as well as other distribution of authority among the management bodies of the non-commercial organization.

Article 35. Governing Bodies of a Non-Commercial Organization

The governing bodies of non-commercial organizations in accordance with their constituent documents are the following:

the highest governing body (general meeting, convention, conference, founder) shall be entitled to pass resolutions regarding any matters of the NCO's activities;

a governing (executive) body (collegial or individual) performs the ongoing management of NCO (except for matters referred to the exclusive competence

of the highest governing body), and reports to the highest governing body of the NCO;

controlling body (audit commission, auditor, board of trustees, etc.), elected or appointed by the highest governing body of the non-commercial organization, carries out internal oversight over non-commercial organization's compliance with the legislation and its own Charter;

other bodies stipulated by the legislation and consistent with the constituent documents of a non-commercial organization.

The highest governing body:

adopts the Charter of the NCO;

elects the governing body of the non-commercial organization, which, in the period between meetings (sessions, decisions) of the highest body of the NCO, manages the non-commercial organization;

selects the auditing body of the NCO;

introduces amendments and/or addenda to the Charter of the NCO, unless otherwise provided in this Article;

makes decisions on reorganization or liquidation of the non-commercial organization, unless otherwise provided in this Law and other legislative acts regulating specific features of establishment and activities of certain types of organizational and legal forms of non-commercial organizations;

makes decisions pertaining to participation of the NCO as a founder of an association (union) of legal entities, or in regard of joining a union (association) of legal entities as a member;

makes other decisions that are binding for all structures of the non-commercial organization.

Chapter 6
SUPPORT FOR NON-COMMERCIAL ORGANIZATIONS. OVERSIGHT OVER THE ACTIVITIES OF NON-COMMERCIAL ORGANIZATIONS

Article 36. The State and Non-Commercial Organizations

The state shall guarantee conditions for NCOs to pursue their constituent goals. Public authorities and officials shall ensure fulfillment of the rights and lawful interests of non-commercial organizations in accordance with the Constitution of the Republic of Belarus and other legislative acts.

The state promotes establishment and active functioning of NCOs.

Non-commercial organizations may be given tax, customs, and other privileges in accordance with the law.

No interference by state agencies and officials into NCO activities and no interference on the part of NCOs into the affairs of state agencies and officials shall be allowed, except in the cases specified by the law.

Legal entities, individual entrepreneurs and physical persons that provide material support to non-commercial organizations may be exempted from the payment of taxes and duties in accordance with legislative acts.

For the purpose of providing for cooperation and coordination of activities between government agencies, public associations and other organizations, public councils may be established under the auspices of government bodies. These public councils shall include representatives of government agencies and NCOs. The number of members of the public council representing NCOs may not be less than two-thirds of the total membership. The procedure of establishment and operation of the public council under the auspices of the government authority shall be determined by the corresponding government body for which this public council is created. Decisions made by the public council shall be of an advisory nature.

Article 37. Main Forms and Principles of the State Support for Non-Commercial Organizations

The state may provide informational, methodological, organizational, and technical support to commercial organizations, including support in the form of the state procurement of social services and other support.

The state support for NCOs is based on the principles of legality, partnership, transparency, equality, conformity, and responsibility.

Article 38. Support for Non-Commercial Organizations in the Form of the State Procurement of Social Services

Government authorities, local government and bodies of self-governance, in accordance with this Law and other legislative acts, within the scope of their authority, may provide economic support to NCOs in the form of the state procurement of social services.

Non-commercial organizations, in accordance with statutory goals, may cooperate with government authorities by entering into contractual relations with the latter and fulfilling the government requests for the provision of social services following the procedure established by the Government of the Republic of Belarus.

The subject of the state requests for social services provision may include development and (or) the implementation of earmarked social measures, projects (programs) aimed at resolving specific important social issues, as well as competitive tender-based participation in the implementation of national and local projects (programs).

NCO projects (programs), submitted on a competitive basis and consistent with the statutory goals of the non-commercial organization, can be financed (subsidized) by the national and local budgets in the form of budgetary allocations, as well as at the expense of the state extra-budgetary funds of the Republic of Belarus.

The tender procedure for NCO projects (programs), the procedure of funding (providing subsidies) to projects (programs) of non-commercial organizations, as well as the procedure of the utilization of these funds shall be established by the laws of the Republic of Belarus.

Article 39. Socially Valuable Organizations

Non-commercial organizations, funds and public associations (organizations), except for political parties, trade unions, religious organizations pursuing community and charitable purposes, may be recognized as socially valuable (public-good) non-commercial organizations. Non-commercial organizations recognized as socially valuable shall have a priority right to receive state support.

To be recognized socially valuable (public-good) organization, an NCO must meet the following requirements:

implementation of charitable and other socially useful activities for at least three years;

annual audit of the non-commercial organization's activities by an independent auditor at the request of the NCO;

the availability of an open access to the information regarding the NCO activities to a wide range of individuals and legal entities;

no violations of legislation over the last three years.

For the purpose of qualifying for the status of a socially valuable NCO, the following documents and information should be submitted to the Ministry of Justice of the Republic of Belarus:

an application signed by the head of a non-commercial organization;

information regarding the activities of a non-commercial organizations for the past three years;

information regarding the latest independent audit of the non-commercial organization;

information confirming the availability of the open access to the NCO's activity.

Recognition of the non-commercial organization as a socially valuable one shall be effectuated by way of a notification procedure. In the event when within 2 months from the date of notification, a written denial is not received at the NCO's address, the non-commercial organization shall by default be recognized as socially valuable.

The process of recognizing a non-commercial organization as socially valuable shall include taking into account the opinions of concerned government agencies and organizations.

The Register of socially valuable NCOs shall be maintained by the Ministry of Justice of the Republic of Belarus in the form established by this Ministry.

The Register of socially valuable non-commercial organizations shall be open to public.

Any natural or legal person has the right to receive a copy of the charter and a report on the activities of a socially valuable NCO for the last reporting year at the Ministry of Justice.

A failure to comply with the conditions set forth in part three of this article shall entail an exclusion from the Register of socially valuable organizations.

Article 40. Control Over the Activities of a Non-Commercial Organization

A non-commercial organization shall provide information regarding its activities to the registration authority, the government bodies of statistics, the internal revenue services and the founders (property owner, participants, and members) and other persons in accordance with the law and the founding documents of a non-commercial organization.

The volume and the structure of revenues of a non-commercial organization, the information regarding the value and composition of its assets, the NCO's expenses, number and composition of hired personnel, salaries and wages, the share of volunteer labor of citizens in the NCO's activity may not be regarded a commercial secret.

Non-commercial organizations are required to provide the registration authority with documents containing an activity report, personal information regarding members of the governing bodies, as well as financial statements and information pertaining to the utilization of other assets, including those received from international and foreign organizations, foreign citizens, and stateless persons. The forms for reporting and the deadlines for submission of said documents shall be established by the Ministry of Justice of the Republic of Belarus.

Non-commercial organizations recognized as socially valuable ones shall annually post on the Internet or provide to the media for publication a report regarding their activities that shall cover all of the information submitted to the registration authority.

The procedure and timeframe for posting these reports and providing information shall be established by the Ministry of Justice of the Republic of Belarus.

The provisions contained in part three of this Article shall not apply to government associations, state institutions, consumer cooperatives, owners' partnerships and gardening associations.

The registration authority shall exercise oversight over the compliance of the NCO's activity with the goals set in its constituent documents and the laws of the Republic of Belarus. With respect to a non-commercial organization (except for state institutions, state associations, national public-private associations, consumer cooperatives, owners' partnerships and gardening associations) the registration authority shall be entitled to:

request administrative documentation from governing bodies of non-commercial organizations, with the exception of the documents containing information that can be obtained in accordance with the third paragraph of this section;

request and receive information regarding the NCOs activities from the tax authorities, the government statistics agencies and other government bodies, as well as from other public and private organizations;

send its representatives to participate in the activities held by the non-commercial organization;

in the event when an NCO violates the law or commits acts inconsistent with the goals declared in its statutory documents, or in the event of a cancelation

of the state registration of amendments and/or addenda to the NCO Charter, a written warning shall be issued specifying the violation (grounds for invalidating the state registration) and the timeframe given to the NCO to remedy the situation, which should not exceed one month. The warning issued to the non-commercial organization may be appealed against in the court of law.

The appeal against a written warning shall be made following the procedure provided by paragraph four of Article 29 of this Law.

The NCO's repeated failure to submit information specified in this Article in due time shall constitute grounds for the registration authority or the prosecutorial service to appeal to the court of law seeking liquidation of the non-commercial organization.

The legislative acts of the Republic of Belarus pertaining to non-commercial organizations may establish other ways of holding NCOs accountable and their application procedures.

Chapter 7
REORGANIZATION AND LIQUIDATION OF A NON-COMMERCIAL ORGANIZATION

Article 41. Reorganization of a Non-Commercial Organization

A non-commercial organization can be reorganized in the manner prescribed by the Civil Code of the Republic of Belarus, this Law and other legislative acts.

Reorganization of a non-commercial organization may be effectuated by way of merger, takeover, division, separation, and transformation except for the cases specified in parts three and four of this Article.

Foundations may not be reorganized by way of transformation.

Public associations (organizations) can be reorganized by transformation only into the national public-private associations on conditions determined by the President of the Republic of Belarus or by the Council of Ministers authorized by the President to act on his behalf.

Reorganization of an NCO into organizational and legal forms of a commercial organization shall not be allowed.

Legislative acts may establish other restrictions related to reorganization of certain organization and legal forms of non-commercial organizations.

The state registration of new organization (s) set up as a result of reorganization, and the introduction of an entry to the Unified State Register of legal entities and individual entrepreneurs regarding the termination of the reorganized organization (s) shall follow the procedure prescribed by the legislative acts.

Article 42. Liquidation of a Non-Commercial Organization

A non-commercial organization may be liquidated on the grounds and in the manner prescribed by the Civil Code of the Republic of Belarus, this Law and other legislative acts.

Liquidation of a non-commercial organization shall entail termination of its activities without a transfer of rights and duties by succession to other parties, unless legislative acts stipulate otherwise.

A non-commercial organization may be liquidated by the decision of the following parties:

its property owner, the founders (participants, members), or the NCO's body authorized by the constituent documents to initiate liquidation for the reasons including the expiration of the period for which a non-commercial organization was established, the attainment of the goals for which it was established, or in the event when a court of law has ruled that the registration of the non-commercial organization shall be null and void;

by the court, in the event when:

no liquidation decision has been made in accordance with the second paragraph of part three of this Article due to the expiration of the period for which a non-commercial organization was established, or the attainment of the goals for which it was created;

an NCO carries out activities without a special permit (license), or is engaged in activities prohibited by the law, or the NCO commits other repeated or major violations of the law, either by systematically carrying out activities inconsistent with its statutory goals, or when a court of law declares the registration of a non-commercial organizations invalidated, and in other cases stipulated by the legislation;

a legal entity, which was the sole founder of the NCO, has been liquidated;

by the decision of other bodies — in cases stipulated by the legislative acts.

The request to liquidate the NCO on the grounds specified in part three of this Article may be presented to the individuals authorized to make the decision regarding the liquidation by a government agency or a body of local self-governance vested with the authority to make such requests by the existing legislation.

Pursuant to the decision of the court of law regarding the liquidation of an NCO, the responsibilities for its liquidation may be assigned to the property owner, the founders (participants, members) or the body authorized to liquidate the legal entity in compliance with the NCO's constituent documents.

A NCO working in the form of a consumer cooperative, charitable or other foundation may also be liquidated pursuant to the declaration of its economic insolvency (bankruptcy).

In the event when the value of the assets of non-commercial organizations mentioned in the part six of this Article is insufficient to satisfy creditors' claims, they may only be liquidated pursuant to the confirmation of their economic insolvency (bankruptcy).

In cases stipulated by the legislation, liquidation of non-commercial organizations may only be effectuated by consent of the authorized state agencies.

Article 43. The Non-Commercial Organization's Liquidation Procedure

The property owner, founders (participants, members) of a non-commercial organization or an agency making the decision regarding the liquidation of a non-commercial organization shall appoint a liquidation commission (liquidator).

The liquidation commission (liquidator) shall post in a printed periodical, determined by the legislative acts, a notice regarding the liquidation of a NCO, the procedure and deadlines for submitting creditors' claims.

The liquidation commission (liquidator) shall take steps to identify creditors, collect accounts receivable, and notify the creditors in writing of the NCO's liquidation.

No transactions involving the NCO's accounts or any other business activities not related to the liquidation shall be allowed.

Upon liquidation of the NCO, the creditors' claims shall be satisfied in the following order:

First group of claims to be satisfied include claims of citizens whom the liquidated NCO is mandated to compensate for damage to life or health. This should be done by way of capitalization of appropriate periodic payments;

In the second place, the settlements are made in regard of severance pay, royalties under copyright contracts and compensation of persons employed under labor and civil contracts;

In the third place, payments shall be made to cover arrears to the budget and the mandatory payments to the state extra-budgetary earmarked funds, followed by the settlement of the claims of creditors vis-a-vis obligations secured by collateralized assets of the NCO undergoing the liquidation procedure — at the expense and within the constraints of funds acquired from the sale of the collateral;

In the fourth place, settlements with other creditors shall be made.

Part four of this Article does not apply to the cases of liquidation of a NCO in accordance with the legislation on economic insolvency (bankruptcy).

Upon expiration of the period assigned for addressing the creditors' claims, the liquidation commission (liquidator) shall compile the interim liquidation balance sheet containing information in regard of the assets of the NCO undergoing liquidation, a list of creditors' claims and the outcomes of their review.

The interim liquidation balance sheet shall be confirmed by the founders (participants) of the NCO or the NCO's body that passed the resolution regarding the liquidation.

If available funds of the NCO undergoing liquidation (except for the case of institutions) are insufficient to meet the creditors' claims, the liquidation commission (liquidator) shall sell the assets of the non-commercial organization at a public auction in the manner prescribed for the execution of court decisions.

When a private institution under liquidation does not have sufficient funds to meet the creditors' claims, the latter may apply to the court seeking compensation of the remainder of the unpaid claims at the expense of the owner of said institution.

Upon completion of payments to creditors, the liquidation commission (liquidator) shall prepare the liquidation balance sheet, which is to be confirmed

by the founders (participants) of the NCO, or the NCO's body that decided to liquidate the non-commercial organization.

In the case of liquidation of a non-commercial organization by the decision of its founders or a NCO body vested with this authority by the constituent documents, the following documents shall be submitted to the relevant registration authority:

a liquidation statement in the format prescribed by the Ministry of Justice of the Republic of Belarus, indicating therein the details of the procedure and time of liquidation, composition of the liquidation commission, its Chairperson or the information regarding the appointment of a liquidator;

the resolution regarding the liquidation.

On the basis of the documents specified in part twelve of this article, the registration body shall:

within three business days from the receipt of said documents, submit information to the Ministry of Justice of the Republic of Belarus indicating that the legal entity is undergoing liquidation, the information of which should be entered into the Unified State Register of legal entities and individual entrepreneurs;

no later than one business day following the date of receipt of said documents, notify the tax and customs authorities, the social protection Fund of the Ministry of Labor and Social Protection of Belarus, the Belarusian national unitary insurance enterprise *Belgosstrakh* (its subsidiary) about the commencement of the liquidation procedure of the non-commercial organization.

Within thirty business days upon receipt of the notice specified in part thirteen of this Article, the registration body shall receive the following information:

from the tax authorities: a statement of presence (absence) of the NCO's indebtedness to the budget on taxes levied against said entity;

from the agencies of the social protection Fund of the Ministry of Labor and Social Protection of the Republic of Belarus: a statement of presence (absence) of the NCO's indebtedness to the Fund;

from customs authorities: — a statement of a statement of presence (absence) of the NCO's indebtedness to the budget on customs payments, and information regarding presence (absence) of the NCO's indebtedness about the availability (absence) of NCO's unfulfilled obligations before the customs authorities;

from the Belarusian national unitary insurance enterprise *Belgosstrakh* (its subsidiary): a statement of presence (absence) of the NCO's indebtedness on mandatory insurance payments to cover accidents at workplace and occupational diseases.

The liquidation commission (liquidator) forwards the following to the registration body:

the NCO's corporate seals and stamps, or a statement of the property owner (the founders, participants) confirming that said articles have not been manufactured, or a similar statement signed by the executive of the NCO, or information regarding the publication of the announcement of the said corporate seals being lost;

the liquidation balance sheet signed by members of the liquidation commission (liquidator) and confirmed by the property owners (founders, participants), or the NCO's body that made the decision regarding liquidation;

the original certificate of the state registration or a statement of regarding the loss of the certificate, information regarding the corresponding announcement in press attached;

The registration authority shall make an entry into the Unified State Register of legal entities and individual entrepreneurs regarding the exclusion of the NCO from the Register in the event of the presence of the following factors:

The NCO or the liquidation commission (liquidator) has presented all of the documents required for the liquidation (termination of activity) as provided in part twelve of this Article;

in accordance with part fourteen of this Article, the government agencies and other organizations have not presented statements regarding presence (absence) of debts to the budget, including arrays on payments collected by customs authorities, the Social Protection Fund of the Ministry of Labor and Social Protection of Belarus, on mandatory insurance payments to cover accidents at workplace and occupational diseases, information on the presence of obligations before the customs authorities; and at least thirty five working days have passed from the date of the notification by the registration authority regarding the commencement of the liquidation procedure of the non-commercial organization;

relevant archives have provided information about the deposit of documents, including personnel records, confirming time work records and salary of the NCO employees, if any.

In the presence of an outstanding debt of the NCO, current obligations before the customs authorities, or in the event of a failure to deposit documents for storage, including personnel information confirming work records and employees' salaries, the NCO's exclusion from the Unified State Register of legal entities and individual entrepreneurs shall only be made upon submission of the documents confirming payment of such debts and fulfillment of obligations to relevant archives, and the termination of obligations to the customs authorities.

The liquidation of a non-commercial organization by a court procedure shall be made in accordance with the law.

The decision on liquidation of a foundation can only be taken by a court of law at the request of parties concerned.

Article 44. Liquidation of a Non-Commercial Organization in Connection with an Outstanding Bad Debt

In the event when a decision has been made regarding recognition of the NCO's debt on taxes and duties (fees), contributions to the state earmarked budget funds, mandatory insurance payments and other payments to the social protection Fund of the Ministry of Labor and Social Protection of Belarus as a bad debt, which has to be written off, the registration body shall make a decision on the liquidation of the NCO.

When the registration authority makes the liquidation decision, the liquidation commission is not established (the liquidator is not appointed).

For the purpose of making an entry regarding the NCO's liquidation in the Unified State Register of legal entities and individual entrepreneurs, the NCO representatives shall submit the following to the registration body:

the NCO's corporate seals and stamps, or a statement of the property owner (the founders, participants) confirming that said articles have not been manufactured, or a similar statement signed by the executive of the NCO, or information regarding the publication of the announcement of the said corporate seals being lost;

the original certificate of the state registration or a statement of regarding the loss of the certificate, information regarding the corresponding announcement in press attached;

the original Charter document bearing a notice of the state registration or indicating its loss with the attached information about the publication of the announcement of the said loss.

The registration authority shall submit information to the Ministry of Justice of the Republic of Belarus for the latter to make the entry regarding the exclusion of the NCO from the Unified State Register of legal entities and individual entrepreneurs; it shall also report on the NCO's liquidation through a court procedure to the tax authorities, the social protection Fund of the Ministry of Labor and Social Protection of the Republic of Belarus, the state statistics authorities, and the corresponding branch of the Belarusian national unitary insurance agency *Belgosstrakh*.

The Ministry of Justice of the Republic of Belarus shall make a record regarding the exclusion of the NCO from the Unified State Register of legal entities and individual entrepreneurs dated on the day the relevant entry was made by the registration authority.

Article 45. The Property of the Liquidated Non-Commercial Organization

Upon liquidation of a non-commercial organization, the assets remaining after the creditors' claims have been satisfied, unless otherwise prescribed by this Law and other legislative acts, shall be transferred in accordance with the constituent documents of the NCO for the purposes for which it was established, and (or) to charity. In the event when the utilization of the assets of the liquidated NCO in accordance with its constituent documents deems to be impossible, the property shall be transferred to the state (except for the property of a liquidated foundation).

The property of a private institution remaining after creditors' claims have been satisfied shall be transferred to the owner of its property, unless otherwise stipulated by the legislative acts or the constituent documents of the institution.

Assets remaining after liquidation of a foundation, including those remaining after the creditors' claims have been satisfied, shall be transferred for the statutory purposes of the foundation. In the event when the aforementioned transfer deems impossible, the assets shall be equally divided between

foundations set up for pursuing similar goals, provided these foundations submit written requests to the court of law that made the decision regarding liquidation of the foundation.

Chapter 8
FINAL PROVISIONS

Article 46. Introduction of Additions and Amendments to Certain Laws of the Republic of Belarus

In connection with the adoption of this Law, additions and changes shall be made to the following laws of the Republic of Belarus:

1. The Law of the Republic of Belarus «On Notary and Notary Activities» dated July 18, 2004 (the National Register of Legal Acts of the Republic of Belarus, 2004, № 120, 2 / 1055; 2006, № 78, 2 / 1212; 2007, № 305, 2 / 1397 № 305, 2 / 1398; 2008, № 14, 2 / 1412., № 157, 2 / 1445, № 172, 2 / 1475, 2008, № 264, 2 / 1531; 2009, № 173, 2 / 1595) Article 43 shall read as follows:

«Article 43. The state registration of the Belarusian Chamber of Notaries.

1. The state registration of the Belarusian Chamber of Notaries by the Ministry of Justice of the Republic of Belarus.

2. For state registration of the Belarusian Chamber of Notaries in the Ministry of Justice of the Republic of Belarus the following documents are presented:

2.1. An application for state registration;

2.2. A copy of the minutes of the general meeting of the members of the Belarusian Chamber of Notaries on the adoption of the Charter of the Belarusian Chamber of Notaries;

2.3. A copy of the minutes of the general meeting of the members of the Belarusian Chamber of Notaries on electing its management bodies;

2.4. The Charter of the Belarusian Chamber of Notaries without notary certification, and its electronic copy (in the. doc or. rtf format);

2.5. The list of members of the Belarusian Chamber of Notaries;

2.6. A document confirming the right to situate the Belarusian Chamber of Notaries (its governing body) at its present location;

2.7. An original or a copy of a payment document confirming payment of a state fee; an original or a copy of the payment document confirming payment of state duty for state registration.

4. The state registration of the Belarusian Chamber of Notaries is made according to the procedure established for the state registration of non-commercial organizations.

5. Decision to deny the state registration of the Belarusian Chamber of Notaries may be appealed against in the Supreme Court of the Republic of Belarus in accordance with the legislation of the Republic of Belarus.

2. The Law of the Republic of Belarus of December 17, 1992 «On Freedom of Conscience and Religious Organizations» (*Vedamasci Vyarhounaga Saveta*

Respubliki Belarus, 1993, № 2, Article 18, 1995, № 13, Article 125, The National Register of Legal Acts of the Republic of Belarus 1999, № 95, 2 / 102, 2002, № 123, 2 / 886, 2008, № 184, 2 / 1513, 2010, № 17, 2 / 1661): part one of Article 16 shall read as follows: «Religious organizations are subject to mandatory state registration. The state registration of religious organizations is carried out in the manner prescribed by the Law of the Republic of Belarus «On Non-commercial Organizations» and this Law.»; Article 17 shall read as follows:

«For the state registration of a religious community, the following documents are submitted to the respective registration body:

an application for the state registration;

two copies of the Charter document without notarization, and its electronic copy (in. doc or. rtf format); the minutes of the constituent meeting;

a document confirming the availability of NCO's legal address;

list of founders of the religious community, indicating full name, date of birth, nationality, place of residence and home telephone number, place of employment (study) and business telephone number, and featuring personal signatures of each of the founders.

Religious community professing faith previously unknown in the Republic of Belarus, shall attach information to the statement about the foundations of the faith and the corresponding cult practices, including the history of the religion professed by the community, the forms and methods of its activity, the attitude toward marriage and family, education, exercising public duties, receiving health care services by followers of this religion. The requirements to the composition, content and the order of presentation of such information is determined by the Council of Ministers.

Information on the registration of a religious community professing doctrine, previously unknown in the Republic of Belarus, is sent by the appropriate registration authority to the national state administration body on religious affairs for the state religious expert examination. In this case, the term for review of the submitted documents is extended to six months.»

Article 47. Transitional Provisions

Before bringing the legislative acts in conformity with this Law are applied to the extent in conformity with this Law.

NCOs registered prior to this Law entering into force shall bring their founding documents in compliance with this Law within one year from the date of its entry into force.

Prior to conforming to this Law, the constituent documents of non-commercial organizations are applied to the extent in compliance with this Law.

Article 48. Entry into Force of this Law

This Law shall come into force in six months after its official publication, except for this Article and Article 49, which come into force after the official publication of this Law.

Article 49. Bringing of the Legislative Acts of the Republic of Belarus in Conformity with this Law

The Council of Ministers of the Republic of Belarus within six months after the official publication of this Law shall:

ensure that the legislative acts are in conformity with this Law;

take other measures necessary to implement the provisions of this Law.

The President
of the Republic of Belarus

POSITION OF THE DEVELOPERS OF THE DRAFT LAW: RATIONALE FOR NECESSITY OF ADOPTION OF THE LAW OF THE REPUBLIC OF BELARUS «ON NONCOMMERCIAL ORGANIZATIONS»

Arguments in Support of Adopting the Law of the Republic of Belarus On Non-Commercial Organizations [1]

The draft law of the Republic of Belarus «On Non-Commercial Organizations» (hereinafter referred to as the draft law) was prepared pursuant to Item 19 of the Plan of Drafting Legislation for 2010 approved by Edict №2 of the President of Belarus On Approving the Plan of Drafting Legislation for 2010 of January 4, 2010, as well as the Plan of Drafting (Co-drafting) Legislation by Government Bodies for 2010 approved by Resolution №283 of the Council of Ministers of Belarus of February 26, 2010.

This draft law is designed to raise the efficiency of legal regulation on not-for-profit organizations and harmonize effective relevant legislation.

At present, the non-commercial legislation of Belarus consists of a number of regulatory legal acts, among them:

– Decree №1 of the President of Belarus On State Registration and Liquidation (Termination of Activity) of Business Subjects of January 16, 2009;

– Edict №302 of the President of Belarus On Some Measures to Streamline the Activity of Foundations of July 1, 2005; and

– the laws of the Republic of Belarus On Political Parties, On Public Associations, On Trade Unions, On National State-Public Associations, and On the International Arbitration (Mediation) Court, to name a few.

Non-commercial organizations are those organizations whose activity is not aimed at extracting profit and which do not distribute received profit among their members. This distinctive aspect of non-commercial organizations defines the similarities of regulating the establishment and activity of various types of NCOs.

This draft law determines the legal status of NCOs, the procedure of their creation, reorganization and liquidation, the principles of their activity, governance, and asset formation and management, and their relations with government and local self-government bodies.

In drafting this law, the NCO legislation of the Russian Federation, Azerbaijan, Kyrgyzstan, Kazakhstan, Armenia, Austria, Spain, Moldova, Slovakia and some other countries was studied.

This draft law does not aim at replacing the aforementioned legislative acts, which regulate specific aspects of the establishment and activity of a number of organizational and legal types of NCOs. At the same time, since NCOs work primarily for the public good and set themselves goals that have no

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[1] *Unofficial Translation by International Center for Not-For-profit Law (ICNL), 2010*

material interest for their founders, it stands to reason to add common norms pertaining to all types of NCOs – with the exception of consumer societies and their associations.

This exception is mainly accounted for by the fact that the primary goal of consumer societies is to satisfy their members' material (property) needs. These legal entities are closer to commercial organizations, since their objectives under Article 3 of the Law of the Republic of Belarus On Consumer Cooperation include but are not limited to: wholesale and retail trade, public catering, the purchase from individuals, including individual entrepreneurs, and legal entities of agricultural produce and raw materials, farm and cottage craft products, wild fruit, berries and mushrooms, medicinal plants and technical raw materials, secondary material resources and other kinds of products and raw materials, and production of agricultural produce and foodstuffs, nonfoods, and raw materials for industry use, as well as provision of paid services to citizens.

This draft law sets out to establish common principles of state registration and activity of NCOs of all organizational and legal types, except national state/public associations and state associations. The draft law suggests a standard procedure of state registration of NCOs and amendments to their articles of associations. It is proposed to set common requirements for the articles of association of all NCOs. Considering the specific nature of private institutions as an organizational-legal type of NCO and the lack of legal leverage on their establishment and activity, the draft puts forth a number of additional requirements on their articles of association. In part, in addition to common NCO provisions their articles of association would specify:

their activities,

the rights and duties of the owner of the private institution,

the procedure of asset formation of the private institution, and

the procedure of owner financing of the private institution's assets.

It is also proposed to determine a short list of documents submitted by an NCO for its state registration or the registration of amendments to its articles of association, and establish a universal 30 days' term for the consideration of documents submitted for such purposes.

The draft law further provides that consideration of submitted documents or amendments begins from the date of submitting all required documents rather than the date a relevant application was put in. We think that this is correct, as it will give an NCO time to submit the lacking documents and the registering body, time to consider the documents presented.

It is further proposed to codify common grounds for all NCOs on which their registration (or that of amendments to their articles of association) may be suspended or denied to them. Alongside that, the drafters propose to keep the additional grounds for such suspension or denial that are provided for by currently effective legislative acts regulating the establishment and activity of some organizational-legal types of non-commercial organizations.

It is also proposed to determine for all NCOs that their state registration may be invalidated by a court decision if it is found that they were registered on the strength of knowingly false information such as misrepresentation of facts

or the submittal to registering bodies of forged documents that had substantial significance for the decision to register an NCO.

Alongside that, the drafters suggest that the registering body make its own decision to reverse the state registration of amendments to an NCO's articles of association if it was registered on the strength of knowingly false information. This proviso is accounted for by the fact that the organization's activity is not found illegal and is not prohibited in this case, so there is no need for a court decision. Another reason is that there have cases where amendments to the charter of a public association were registered on the strength of forged documents (for example, falsified minutes of meetings of the organization's governing body), which was not evident at the time of registration. Later, an examination carried out by the registering body in response to complaints by members of the association would reveal that the submitted documents had been forged.

Considering the special character of the field of operation of NCOs, it is proposed to group the provisions regulating the activity of NCOs into a separate section.

For example, the drafters propose to determine that lectures, seminars, conferences, exhibitions, concerts and sports events organized by an NCO in pursuit of its statutory goals shall not be regarded as entrepreneurial activity, and that NCOs may perform works, provide services and supply goods for government needs on a contractual basis without setting up and/or participating in any commercial organizations.

These provisions conform to those of Edict №531 of the President of Belarus «On Some Aspects of the Activity of a Number of Physical Culture and Sports Organizations» of November 3, 2009, under which national federations (unions, associations) for one or more sports may transfer, on a free or commercial basis, rights to TV, radio and other broadcasting of sports competitions, sell tickets to competitions held by themselves or with their participation, and engage, without setting up and/or participating in any commercial organizations, in the following types of entrepreneurial activities related to organizing and holding international sports competitions: tourism activities; wholesale and retail trade; provision of services in the area of physical culture and sport; organization of recreation and entertainment; renting its own property; safe keeping of vehicles; and advertising.

Another reason why this provision is put forth is that under Article 21 of the Law of the Republic of Belarus «On Public Associations», revenue from lectures, exhibitions, sports and other events held in compliance with statutory goals is referred to as a separate source of forming an organization's funds. So is revenue from entrepreneurial activity engaged in pursuant to the procedure set forth in paragraph three of Article 20 of the Law «On Public Associations». On the other hand, under certain circumstances the holding of lectures, seminars, conferences, exhibitions, concerts and sports events may contain elements that define such activity as entrepreneurial. While the holding of such events by a commercial organization set up by an NCO would not be regarded as an activity of the public association itself, but as that of a commercial organization, many public associations still organize lectures, exhibitions and sports events

as a method of their activity, and the holding of these events by a commercial organization set up by an NCO makes the establishment and functioning of the parent public organization senseless.

With due regard to the special nature of the activity of NCOs, the draft sets the requirement that the revenues of a non-commercial organization should not be returned to its founders (participants, members) after its liquidation or reorganization.

In view of the fact that of all organizational-legal forms of NCOs, the foundation alone is an organization which operates on voluntary contributions, and that its activity has exclusively socially useful goals, the drafters propose to remove the possibility of any abuse on the part of the employees of a foundation by imposing limits on their remuneration – up to 20% of the foundation's expenses in the reporting period.

The draft also sets out to regulate relations arising from transactions made by and between a non-commercial organization and interested individuals, which relate to managing the organization's property.

The draft provides that if an NCO incurs damages as a result of a transaction involving either officers of its governing body, who by virtue of their position can have influence on the way the NCO manages its property and engage in a transaction with the NCO either in person or through an agent, or relatives of such officers, then such persons shall bear liability for the damages and compensate them to the NCO if the transaction was not approved by a duly authorized body. In addition to damage compensation, such a person shall return all income obtained as a result of the transaction to the NCO.

Since there is much in common between the approaches to the establishment and activity of various types of NCOs, the drafters intend determining an NCO's governing bodies and defining their powers. The draft proposes to consider the following governing bodies:

The superior governing body (general meeting, congress, convention, founder) entitled to make decisions on any aspect of the NCO's activity;

The managing (executive) body, which exercises collective or singlehanded control of day-to-day activity of the NCO (exclusive of issues in the sole competence of the superior governing body) and is answerable to the superior body; and

The supervisory body (auditing committee, controller, council of trustees and the like) which is elected or appointed by the superior body of the organization to exercise internal supervision over its activity's compliance with the law and its own articles of association.

Considering the special importance of the superior body, the drafters think it necessary to define its competence in detail without specifying those of the executive and control bodies to the same extent.

The draft law aims at defining common approaches to State-NCO relationships. For example, it provides for guarantees to NCOs on the part of the State and its non-interference in their activity on the one hand and for the possibility of State aid to NCOs on the other.

This conforms to applicable laws of Belarus, among them Edict №30 of the President of Belarus «On State Aid to the Handball Club Minsk Dynamo»

of January 10, 2009; Edict №116 «On Additional State Aid to Some Sports» of March 1, 2010; Edict №52 «On Some Aspects of Activity of Some State Associations» of January 29, 2007; Edict №564 «On Some Aspects of the Activity of the Public Association The Writers Union of Belarus and on Making Changes and Additions to Some Edicts of the President of the Republic of Belarus» of September 7, 2006; and Edict №182 «On Improving Legal Regulation of the Procedure of Providing State Aid to Legal Entities and Some Entrepreneurs» of March 28, 2006, to name a few.

In view of the sufficiently wide coverage of State aid issues, it is proposed to devote some provisions to this sphere with respect to NCOs and define the terms and conditions under which an NCO may be recognized as a public good organization and receive certain privileges.

It also seems justified to provide for the creation of public councils under government bodies. Such public councils already exist in practice. For example, the Public Consultative Council, set up under the Office of the President in early 2009, includes representatives of a number of public associations. Setting down the possibility of creating public councils in a legislative act will enhance their role in society, receive a good welcome from the public, and promote the positive international image of Belarus.

The draft law also indicates the possibility of State assistance to NCOs in the form of government purchase orders.

The majority of both developed and developing countries have established legislative mechanisms which make it possible to engage all subjects of social relations, regardless of their form of ownership and answerability, in the provisions of services that are of priority to the State. The authorities attain their social objectives by way of implementing and financing social programs, granting tax and other privileges and subsidies to legal entities and individual entrepreneurs active in the social sphere, and procuring socially significant services and projects through the mechanism of «social purchase orders.» A great role in this effort belongs to NGOs. By creating certain advantages for public associations working for the benefit of the public, the State promotes their positive development and stimulates their civic activity.

In Slovakia, for example, the government employs, in accordance with the national legislation, various financial instruments and levers to engage the NCO sector in the implementation of its policy. These are government subsidies and grants, contracts for works and services, and indirect funding through a mechanism of voluntary donations made to NCOs by legal entities and physical persons as they pay their taxes – in amount of 2 or more percent of the sum of the tax.

The tax law of Germany provides for benefits to NCOs working for the public good.

In 2005, the Law on Government Social Purchase Orders was adopted in the Republic of Kazakhstan.

According to the Latvian Law on Public Benefit Organizations, tax privileges and other benefits are granted to organizations recognized as PBOs.

Examples of close and mutually beneficial cooperation between the State and NGOs may be found in the legislation of countries such as Canada, Romania, Lithuania, and the Republic of Cyprus, to name a few.

In Sweden, central bodies of power and local authorities support NGOs financially by distributing grants in areas such as culture, social policy, and support of young people.

The implementation of social programs and projects by placing government social purchase orders has a number of indisputable advantages. Where public associations implement government social programs, the efficiency rises, the quality of services improves, and budget funds are used more prudently. Innovative forms of social provision emerge. Citizens get involved in the resolution of problems of vulnerable groups of the population on a larger scale.

Government social purchase orders may cover a broad range of areas such as environmental protection, support of the government's youth policy and childhood protection initiatives, aid to the socially vulnerable population groups, orphans and children in single-parent and large families, and other socially significant endeavors.

In our opinion, the realization of the proposal to introduce public social procurement in various spheres of life will mobilize society's resources and direct them to priority areas of the government's social policy; raise the quality of services rendered in a competitive environment; and make it possible to spend budget funds more efficiently because the price of services in a competitive environment will decrease and government purchase orders will be placed through a competitive bidding process.

The drafters think that social relations issues arising from the fulfillment of government social purchase orders by NCOs in Belarus may be outlined in this draft law and further regulated in a separate law at a later stage.

The drafters further suggest that all NCOs, except state associations, state-run institutions, consumer cooperatives, owners partnerships and gardeners associations, be obligated to submit reports about their activity, the composition of their governance bodies, and the use of funds and other assets, among them those received from international and foreign-based organizations, foreign nationals, and persons without citizenship.

In view of the special status of NCOs recognized as socially significant, it is proposed to establish the requirement that they inform the public about their activity by publishing relevant reports including all the information they submit to registering bodies either on the Internet or in the mass media.

The draft law also proposes to provide that the registering body monitor the compliance of NCOs' activity with their statutory goals and the national legislation. Exceptions may be made for individual organizational-legal types of NCOs such as state-run institutions, national state/public associations, consumer cooperatives, owners partnerships, and gardeners associations.

The draft law sets forth the procedure of monitoring the activities of NCOs, determines the body authorized to monitor compliance of NCOs' activity with their statutory goals and the national legislation, and defines its powers and measures to be taken should violations of law be detected.

The draft law also establishes the procedure of liquidation, determines the state bodies and organizations involved in this procedure, and lists the documents needed to complete it.

The adoption of the Law of the Republic of Belarus «On Non-Commercial Organizations» does not require any additional funding from the budget.

POSITION OF INTERNATIONAL EXPERTS: PROJECT ANALYSIS OF THE LAW OF THE REPUBLIC OF BELARUS «ON NONCOMMERCIAL ORGANIZATIONS» (THE INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW)

Analysis of the Draft Law of the Republic of Belarus on Non-commercial Organizations [1]
International Center for Not-for-Profit Law

December 20, 2010

Per request of a number of non-government organizations, International Center for Not-for-Profit Law (ICNL) has developed this Analysis of the Draft Law of the Republic of Belarus «On Non-commercial Organizations» (hereinafter referred to as «NCO Draft Law» or «Draft Law») (hereinafter – Analysis). The text of the Draft Law was kindly shared with us by our Belarus partners non-governmental organizations (NCOs)[2].

The current Belarus legislation, even without NCO Law, is very restrictive in regards to activities of NCOs, and several provisions already contradict to international law and international best practices. The Draft NCO Law repeats many such provisions, and might introduce several new provisions, which may further restrict activities of NCOs. This concern is supported by the secretive process of Drafting NCO law. The Ministry of Justice (MoJ) and the National Center of Legal Information of the Republic of Belarus (NCLI) are designated governmental Drafters of the new NCO Law. Many Belarus NCOs have applied to MoJ and to NCLI requesting to include them into the Drafting process and asking to share with them the Draft NCO Law. While several NCOs were able to unofficially receive the text of NCO law, the Drafters did not make the Draft NCO law available to the public, and, even did not to share it with those NCOs who wrote to the Drafters specifically requesting to receive the text of the NCO law. Only a very few NCOs, selected by the MoJ, were invited to participate in the roundtable[3] organized to discuss the concept of the NCO Law on December 23, 2010.

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[1] Prepared under the auspices of the PACT- led "Organizational Development Support (ODS) Program in Belarus, supported by USAID.

[2] We are aware that the Drafting process is not completed yet. Therefore we are not confident that the text has not been changed on the date of realize of this Analysis. We attach the text of the Draft Law to this Analysis to make it clear what are the provisions that we had commented on.

[3] The MoJ is conducting a roundtable to discuss the concept of the NCO Law on December 23, and invited several Belarus organizations to participate in this roundtable. However, it denied requests of some other prominent Belarus NCOs who are experts in NCO legislation, to participate in the roundtable, and, ironically, did not share the text of the Draft law even with those invited to the roundtable.

The purpose of this Analysis is to address provisions in the NCO Law which might even further restrict activities of NCOs. (We will not address all restrictive provisions, which already exist in other laws, but repeated in the Draft NCO law.) We will also briefly address a few provisions in the Draft NCO law which might potentially improve regulation of activities of NCOs. In addition, we propose some new issues, which are not addressed in the Draft NCO Law, but, we hope, might be included to improve the current regulation of NCOs.

At this time, we are not focusing on technical improvements of the text of the Draft NCO law, such as defining terminology or refining text of select provisions.

The primary focus will be given to provisions addressing activities of public associations, foundations, institutions, and unions of legal entities and entrepreneurs («unions of legal entities»), as well as to provisions which apply to all forms of NCOs. We will not consider specifics of such legal organizational forms of NCOs as a consumer cooperative, a national state and public association, various organizational structures of the latter including a legal entity, a state association, a chamber of commerce, the Belarus notary association, owners' partnerships, gardening associations, a standing mediation court, a permanent international arbitration court.

Summary

<u>*The following provisions in the Draft NCO Law raise our concern:*</u>

- *Extending restrictive regulation[4], which currently applies to some forms of NCOs, to additional forms of NCOs (i. e. institutions and unions of legal entities).* The current registration process for institutions and unions of legal entities will become much more complicated (for example, it will take at least 30 days, instead of one day, and will allow government's discretion to decide whether to register an institution). Besides, MoJ will have authority to request any internal documents, conduct unlimited audits, and attend any internal events, without reservation, conducted by institutions and unions or legal entities.
- *Introducing new restriction on who can be a founder of an institution* (for example, requiring a foreign person to present a document proving that such person has never been convicted of committing a crime in his country of citizenship).
- *Introducing additional reporting for NCOs, by requiring submitting «documents on expenditures of monetary assets and use of other assets, including those received from international and foreign organizations, foreign*

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[4] *Such threat will become a reality only if provisions of the new NCO Law will supersede provisions of the Belarus President's Decree «On State Registration and Liquidation (termination of activities) of subjects of economic activities» № 1 dated January 16, 2009 (hereinafter referred to as «President's Decree on State Registration») Please, also See Some <u>suggestions in regards to Concept of the NCO Draft Law</u> on page 3 below.*

citizens and persons without citizenship». In addition, the Draft law does not approve forms and terms of submission of such information, authorising the MoJ to define them, and rising concern over how complecated these forms will be. Similar reporting requirement was introduced in infamous Russian NCO Law of 2006[5], but was repelled for the majority of Russian NCOs[6] in less than three years, after it's adoption as it had proven to be too burdensom and useless for both government and NCOs, and almost resulted in termination of activities of over 60 % NCOs, who simply could not comply with the requirements.

- *Re-registration of NCOs* will be enavibale for the majority of NCOs as they will be required to bring their by-laws in compliance with the new NCO Law. Taking into consideration problems with registration, that Belarus NCOs are currently facing, there is a threat that many NCOs will simply fail to pass through the re-registration, and therefore, will be liquidated.

New provisions of the Draft NCO Law which might potentially have positive effect on Belarus NCOs:

1) *Right to carry entrepreneurial activities. Draft NCO Law allows NCOs to carry entrepreneurial activities directly within limitations* without requiring them to establish a separate subsidiary. This provision might be important only for public associations which cannot carry such activities without establishing a business entity.[7]
2) *Definition of «conflict of interest».* For the first time in Belarus legislation, Draft NCO Law contains provisions on conflict of interest, which would allow resolving the conflict of interest, and protecting economic rights of NCOs in transactions, where parties include an NCO and a person in the position to make/influence decisions in regard to assets of NCO. The new provision is positive also because it does not provide government with the authority to interfere, just provides a base for protecting right through the civil law procedure.
3) *Definition of «state social contracting».* State financing of NCOs is one of the common sources of funding for NCOs in many countries, but almost non-existent in Belarus, even for social services providers. Introducing such definition might help to facilitate the process of adoption of additional legislation to allow the state's financing at least NCOs in social sphere on transparent and competitive bases.

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[5] Federal Law of the Russian Federation № 18-ФЗ «On Introducing Amendments to Certain Legislative Acts of the Russian Federation» dated January 10, 2006.

[6] Article 32.3(1) of the Russian Law on NCOs exempts from such reporting organizations, which have gross income of less than equivalent of $100,000 and do not receive foreign funding. The reporting requirements for the rest of NCOs remain to be complex, but were also simplified in spring 2010.

[7] This provision in the NCO law will have a positive effect on public associations if the provisions of the NCO Law will overpower Provisions of the current Law on Public Associations, and this is not clear whether this is going to be the case. See some suggestions in regard to Concept of the NCO Draft Law in the Summary.

4) *«Organizations of social importance».* Introduction of the status of organizations of social importance might have positive effect, facilitate development of philanthropy and state support of NCOs and contribute to improved sustainability of NCOs. However, in order to have a positive effect, status of social importance shall be rewarded with specific preferences (i. e. tax incentives for NCOs with such status and for their supporters, designated state funding), which shall be proportional to additional burdens of filing documents in order to obtain such status, filing reports and submitting to annual audits.
5) Establishing public councils with state bodies. Draft NCO Law allows for establishment of consultative councils with the state bodies, with the purpose to improve interaction between the government and the public.

Issues in sections 3–5 are not sufficient to make positive effect without adoption of additional substantial legislation.

Some suggestions in regard to Concept of the NCO Draft Law

Draft NCO Law applies to all NCOs[8] (with exception of consumer cooperatives and state associations). At the same time, the Draft NCO Law provides that *«Specific features pertaining to the legal status, establishment, activities, reorganization and liquidation, and specific organizational and legal forms of non-commercial organizations, which are not regulated by this Law, shall be regulated by other legislative acts»*[9]. The Draft NCO Law does not introduce any changes (with a few exceptions) to other legislative acts, regulating forms of NCOs, which as Law on Public Associations or Presidents Decree on Some Measures on Systematizing Activities of № 302 dated July 1, 2005.

With adoption of the NCO Law numerous problems will arise, since NCOs activities will be governed by several conflicting legsilative acts. For example, the NCO Law allows NCOs to carry enterpreneurial activities. However, the current, and unchanged Law on Public Associations prohibits public associations, one form of NCO, to carry such activities. Which law should have a priority, the new law, which establishes provisions for all NCOs, or, the old one, which provides for regulation of a specific form of an NCO (a public association)? Similar problems will arise with most of the provisions of the NCO law, cousing problems with inconsistent implementation for both NCOs and government bodies.

The Draft NCO Law provides that the Council of Ministers of Belarus shall bring legislation in compliance with the new law, within six months since the date of it coming into force. However, the confusing situation described above, will make the process of bringing legislation in compliance with the NCO Law, a challenge. It is unclear how to resolve it for everyone, including the experts from the Council of Ministers, who will be working on it. The common practice in

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[8] *Paragraph 2 of Article 1 of the Draft NCO Law.*

[9] *Paragraph 3 of Article 1 of the Draft NCO Law.*

regards to bringing legislation in compliance with the new law is such, that laws of the same legal importance as the newly adopted law, shall be amended at the time of adoption of the new law. Otherwise, the problems with implementation of newly adopted legsilation are inevitable.

There are at least two ways on how to resolve this confusing situation:

1. Adopt a new NCO Law in a package with amendments to all other laws (legislative acts) which require changes due to adoption of the new law, or
2. The new law shall only address provisions which do not duplicate provisions in other laws, for example, status of organizations of social importance, social contracting, or new legal forms for NCOs.

Other suggestions regarding the Concept of the NCO Law:

- Use of the new Law on NCOs to eliminate from Belarus legislation prohibition on unregistered NCOs (such prohibition and penalties for participation in informal NCOs are contrudictory to international law).
- Exclude institutions and unions of legal entities from regulation under the NCO Law similarly to such exclusion for consumer coopratives and state associations.
- Introduce new legal organizational form «association» which would allow joint membership of legal entities and individuals (not just enterpreneurs, which is the case under the current law). Such legal form exists in almost all European countries and helps legal entities and individuals to better satisfy their interests and protect their rights.
- Exclude clauses on consumer cooperatives and state associations (in particular, articles 10, 23 and oth.) since these clauses contradict the second part of article 1 that says: «This Law shall not govern consumer cooperatives and government-run entities».

Analysis of some provisions of the Draft NCO Law

1. Extending restrictive regulation on institutions and unions of legal entities

Draft NCO Law extends restrictive regulations on registration of NCOs and on control over their activities, which apply to some forms of NCOs (i. e. public associations and foundations), to institutions and unions of legal entities. Currently, institutions and unions of legal entities are regulated by the Civil Code of the Republic of Belarus and President's Decree on Sate Registration. We are not aware of any problems in regards to registration or operations of these forms of NCOs which would require adoption of new legislation. The current legal framework seems to be self-sufficient, and in compliance with the international best practice. Our Analyses did not identify any need for adoption of new legislation in regards to these forms of NCOs, and especially adoption of restrictive legislation. Below we will discuss some problems with extending restrictive regulation on these forms of NCOs:

A) More complicated registration procedure, replacement of «notification registration» process with «registration based on a permit»

Draft NCO Law extends provisions on registration, currently applicable to public associations, on institutions and unions of legal persons, without major changes. Article 27 of the Draft NCO Law provides for a «registration process based on a permit», replacing a very simple «notification registration process» currently applicable to institutions and unions of legal entities. As a result of the NCO Law, registration for institutions and unions of legal entities will take at least 30 days, instead of one day, institutions and unions of legal persons will be required to submit many more documents, listed not only the NCO Law itself, but also in «other legislative acts», MoJ as registration authority will have a long list of reasons for denial of registration instead of current very limited list of reasons to deny registration only in cases of not meeting a few basic formal requirement, the MoJ will gain power to return documents «without consideration» if not all required documents are submitted, and to «suspend registration process» for additional 30 days in case if MoJ will discovering «eliminable defects in the documentation submitted for registration», etc.

Analysis

It is important to note that registration procedure for public associations and for foundations in Belarus under the current legislation, repeated in the Draft NCO Law and applied to all NCOs, is very complex and discriminating compared to registration procedure for business entities. Experience with implementation of current legislation shows that the current registration procedure allows for a broad discretion by the MoJ in decision making whether to register an NCO, occasionally resulting in denials of registration of groups which are not «popular» with the government. Such procedure does not comply with the international best practices. Extending such regulation to additional forms of NCOs makes this non-compliance even worse.

Extension of restrictive provisions on additional forms of NCOs is a step backwards in Belarus legislation, bringing it close to countries, like Turkmenistan, Uzbekistan, Tajikistan, and away from progressive trend in European countries towards simplified registration procedures. Indeed, several European countries have adopted simplified procedures and do not require any state approval for these organizations to be established as legal entities.

In a number of European countries, no government registration is required for associations. They can obtain legal personality by completing a simple and wholly voluntary notification procedure. In some Western European countries, such as Sweden or Denmark, the only requirement for an association to become a legal person is for its charter to exist in written form. Other countries have adopted a notification procedure to inform the public of the existence of these associations. Under this process, associations need to make their existence public through a declaration to a government entity that publicizes or enters into a public registry identifying information regarding the association. Such

notification processes have been adopted in Belgium, Luxembourg, France, the Netherlands and Portugal.

Other countries, such as the US and Germany, require NCOs to go through a registration procedure in order to obtain legal personality, but this procedure is nonetheless simple to complete. German procedure is comparable to the current procedure for registering institutions and unions of legal entities in Belarus.

This brief overview of practices on registration of NCOs in other countries demonstrates that registration procedure for public associations and for foundations in Belarus under the current legislation, as well as procedure in Draft NCO law, do not comply even with common European practices. We are happy to provide a detailed overview of registration procedures for NCOs in other countries, in an effort to convince the Belarus government on the need to simplify procedure for registration of NCOs, and not to extend complex registration onto additional forms of NCOs.

Recommendation

We recommend that the Drafters of the NCO Law consider applying registration procedure under the President's Decree on Registration to all forms of NCOs, and specifically to public associations and foundations, instead of extending the complex registration procedure onto additional forms of NCOs.

B. Extending provisions on control over activities of NCOs over institutions and unions of legal entities

All provisions on control over activities of NCOs by the MoJ will apply on institutions and unions of legal entities, amongst other NCOs. In compliance with article 40 of the Draft NCO Law:

«A non-commercial organization shall provide information regarding its activities to the registration authority, the government bodies of statistics, the internal revenue services and the founders (property owner, participants, and members) and other persons in accordance with the law and the founding documents of a non-commercial organization.

…

Non-commercial organizations are required to provide the registration authority with documents containing an activity report, personal information regarding members of the governing bodies, as well as financial statements and information pertaining to the utilization of other assets, including those received from international and foreign organizations, foreign citizens, and stateless persons. The forms for reporting and the deadlines for submission of said documents shall be established by the Ministry of Justice of the Republic of Belarus.»

…

The registration authority shall exercise oversight over the compliance of the NCO's activity with the goals set in its constituent documents and the laws of the Republic of Belarus. With respect to a non-commercial organization (except for state institutions, state associations, national public-private associations, consumer cooperatives, owners' partnerships and gardening associations) the registration authority shall be entitled to:

- request administrative documentation from governing bodies of non-commercial organizations, with the exception of the documents containing information that can be obtained in accordance with the third paragraph of this section;
- request and receive information regarding the NCOs activities from the tax authorities, the government statistics agencies and other government bodies, as well as from other public and private organizations;
- send its representatives to participate in the activities held by the non-commercial organization;
- in the event when an NCO violates the law or commits acts inconsistent with the goals declared in its statutory documents, or in the event of a cancelation of the state registration of amendments and/or addenda to the NCO Charter, a written warning shall be issued specifying the violation (grounds for invalidating the state registration) and the timeframe given to the NCO to remedy the situation, which should not exceed one month. The warning issued to the non-commercial organization may be appealed against in the court of law».

Analysis

Reporting requirements and authority of the MoJ to control activities of NCOs, provided in the NCO law are excessive and contradictory to European common practices. Extending them on even broader circle of NCOs makes Belarus legislation even more restrictive and contradictory to international common practices.

Please, also see Analysis in Section 3 On Introducing additional reporting for NCOs (below).

Reporting is obviously important part of activities of NCOs, as it allows NCOs to inform the public about their activities. Such transparency with the public is critical because the pubic serves as a beneficiary and also as a source of funding for NCOs. Business, government or public will not be interested in supporting an NCOs that they know nothing about. Therefore governments in most countries support transparency in activities of NCOs. Legislation in all countries provides for at least some reporting requirements for NCOs. Furthermore, in instances when the government grants NCOs special tax preferences, it has an obligation before the tax payers not just a right, to supervise activities and the use of such preferences by NCOs in the designated manner to avoid losses into the state budget.

It is also important to remember that any reporting requirements and audits are a substantial burden for both government and NCOs. Reporting

requirements shall be proportional to preferences given to NCOs, or should address public's safety and interest in case of reporting on activities subject for special regulation. Therefore, governments are usually selective, and do not apply the same reporting requirements on all entities, which would be a tremendous waist of governments resources. There is no European country where all NCOs would have to report on programmatic and finance activities. Even in regards to tax reports, this is a general rule, that small NCOs are exempt from reports, and are permitted to file simplifies tax reports.

The Russian Federation also adopted a differentiating approach in regards to reporting requirements for NCOs. Russian NCOs are exempt from all program and finance reporting, if their annual income is below equivalent of $100,000, and if they do not receive foreign funding[11]. More than 70% of Russian NCOs satisfy these criteria and therefore, exempt from reporting requirements. In spring 2010 the Russian MoJ simplified[12] reporting requirements for the rest of NCOs, compared to requirements adopted in the infamous Russian NCO Law in 2006, recognizing that it was a mistake to impose such complex requirements on Russian NCOs in 2006.

More significantly, the Draft Law provides for highly intrusive means of scrutiny of public associations without procedural protections for the association. In other countries, legislation establishes detailed procedures which allow NCOs or other audited entities to protect their rights, and also allows government auditors to remain focused and use government's resources dedicated to auditing, efficiently. For example, in Poland, the Ministry of Social Security has the right to access a public benefit organization's property, documents and other carriers of information, as well as to demand written and oral explanations. Such an inspection must be performed in the presence of a representative of the organization or other witness. The inspecting officials must prepare a written report; the head of the organization then has the opportunity to submit a written explanation or objections to the content of the report, within 14 days.

In the UK, the government has no powers to investigate NCOs as such. The authorities do, of course, have a range of powers – related to terrorism and criminality (police), financial malpractice by companies or banking agencies, childcare (Social Services Inspectorate) – but these are generic and not specific to the charitable sector. Independent of government, the Charity Commission is invested with supervisory and investigatory power. In fulfilling its supervisory duties, the Commission may visit a charity to examine its administration, but these visits are announced in advance; initiating an investigation without cause runs against the ethos of the Commission.

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[11] Article 31.3(1) of the Russian Federal Law on Non-commercial Organizations.

[12] Order of the MoJ of the Russian Federation dd. March 29, 2010 № 72 « On Approving Forms for Reports for NCOs».

According to the Russian Law on Non-commercial Organizations[13], audits of NCOs activities shall be conducted by government bodies in compliance with rules established in the Federal Law[14] regulating audits of all entities. Procedures in this law allow for protection of rights of an audited entity, including an NCO. Furthermore, the Russian MoJ approved a detailed procedure for government's audits of NCOs[15]. Currently audits of NCOs are conducted not more frequently than once every three years (the same as for businesses,) and annual plans for conducting audits of individual NCOs are posted on the MoJ's website which allows NCOs to get prepared for such audits.

The Draft NCO Law also allows the government to send its representatives to all of an organization's events, without restriction. Thus, government representatives can attend meetings of an NCO making funding determinations for watch dog organizations targeting corruption in the government; the government's participation potentially makes the grantor and grantee NCOs targets of government attacks designed to undermine their missions. They can attend the internal strategy sessions of a network of environmental organizations organization a protest against government environmental policies, interfering with the group's ability to carry out the campaign. This Draft Law of organizations to hold events, and on the their representatives, service recipients, and other people to attend. It is contradictory to European common practices and also to international law. For example, Article 8 of the European Convention on Human Rights[16] protects the right to privacy, and has been applied to professional or business activities or premises to protect against arbitrary interference by the public authorities.[17] It can be inferred, therefore, that the premises of NCOs, including associations, are similarly protected under international law. This is not to prevent the government from inspecting association premises or from receiving association records under certain circumstances, but to do so within appropriate limits, which recognize the rights of associations under international law.

Recommendation

We recommend to simplify reporting requirements for all NCOs, and also to limit authority of MoJ to conduct audits and otherwise interfere into activities of NCOs.

2. Introducing new restriction on who can be a founder of an institution

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[13] Article 32 of the Russian Federal Law on Non-commercial Organizations.

[14] Russian Federal Law dd. December 26, 2008 N 294-ФЗ On Protection of Rights of Legal Persons and Individual Entrepreneurs During Conducting State Audits (Supervision) and Municipal Control.

[15] «Administrative Regiment for the MoJ on Implementing Its function of Control Over Activities of NCOs, On Their Compliance with Statutory Purposes and Goals, As Well As Over Their Compliance with the Legislation" approved by the order of the Russian MoJ dated March 31, 2009 года № 90 ("Administrative Regiment").

The Draft NCO Law[18] prohibits the following individuals to be owners (founders) of institutions:

- Individuals or legal entities who had been founders of NCOs liquidated by decision of a court in connection with gross or repeated violations of legislative acts;
- Belarus citizens having an unexpunged or unexpired record of conviction in a deliberate crime;
- Foreign national or a person without citizenship, convicted in the Republic of Belarus or other country for committing a deliberate crime.

Analysis

Such restrictions on who can be owners (founders) are excessive, not justifiable, and certainly uncommon in international practice. The unique character of such restrictions can be partially explained by the unique character of the legal organizational form of NCO- Institution. The institution is a legal entity which does not own any property, but simply using the property, designated to it by the founder. The founder remains the ownership over the assets of institution, and liable for its debts. However, it appears to be reasonable to compare the institution with a business entity, where the founders own a stock in the company. If we accept this comparison, than the main reason to impose restrictions shall be protection of interests of other entities, who enter info contractual relationships with an institution. Of course, restrictions proposed on founders of institutions in Draft NCO Law, do not apply on the founders of businesses in Europe or in Belarus itself. It is possible that unlawful activities of owners can cause damages to third persons or entities themselves, but the best and only protection against such damages is in legislation on administrative penalties and in criminal law, but not by restricting individuals' rights.

Restrictions on who can be founders do little in protecting anyone's rights, but do create problems in establishing institutions. For example, it is not clear what kind of document will be required from a foreign person in order for him to prove that he had never been convicted in his country of citizenship. Most likely, foreigners simply will not be able to be founders of institutions because they will fail to produce a document that they have not been convicted. (In many countries there is no procedure for obtaining such document to prove that there was no conviction.)

This is also not clear what public danger even a former convict, a foreigner or a Belorussian citizen will cause to the public as a founder of an institution.

Draft NCO Law also prohibits *«individuals or legal entities who had been founders of NCOs liquidated by decision of a court in connection with gross*

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[16] The European Convention on Human Rights, Rome, 4 November 1950.

[17] See Niemetz v. Germany, Judgment of 16 December 1992, Series A, No. 251-B, 16 EHRR (1993), para. 31.

[18] Article 15 of the Draft NCO Law.

or repeated violations of legislative acts», to be to be owners (founders) of institutions. This provision is especially unusual, and we have not encountered it in legislation of other countries. Foundation of an entity is an act, which does not have to relate to activities of an organization. Founders may terminate their membership in an organization, or, in case, of a non-membership based organization, such as foundation, may simply do not participate in management of a foundation, and might not participate in its work at all. Even as members of an NCO, founders might not be aware of violations on behalf of an organization, committed, for example, by the managers of such organizations. Even in case if a founder remains actively involved in an NCOs work, and as a result of his actions, an NCO committed violations of the law, a founder will be punished through a termination of his organization, and, also, if proven guilty, through means of administrative and criminal law. It is unfair to impose a double punishment for the same crime/ violation.

According to Constitution of the Republic of Belarus (article 23) *«Restrictions of rights and freedoms of individual are permitted only in cases, defined in the law, in the interest of national security, public order, protection of morality, health of population, rights and freedoms of others».* In case of restrictions on individuals to be founders of institutions, it will be hard to justify such restrictions, in compliance with the cited provision in the Belarus Constitution.

3. Introducing additional reporting for NCOs

The Draft NCO Law[19] imposes new reporting requirement on all NCOs.

«Non-commercial organizations are required to provide the registration authority with ….. financial statements and information pertaining to the utilization of other assets, including those received from international and foreign organizations, foreign citizens, and stateless persons. The forms for reporting and the deadlines for submission of said documents shall be established by the Ministry of Justice of the Republic of Belarus».

The Draft NCO Law does not approve forms or terms of submission of such reports, leaving their approval to the discretion of the MoJ. This creates uncertainly, and a threat and the terms for new reports can be too burdensome, and that many NCOs will not be able to comply with them, subjecting themselves to penalties and liquidation through the court.

Analysis

See also Analysis to Section 1 (B) Extending restrictive regulation on institutions and unions of legal entities (above).

This provision further expands the authority of the MoJ to control activities of all NCOs, in addition to already excessive requirements and authority to control their activities. Such expansion is unnecessary.

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[19] *Article 40 of the Draft NCO Law.*

This provision will require dedication of substantial financial resources from the state budget in order to increase and train the staff of the MoJ, as it had happened when similar provision was introduced in the Russian Law on NCOs in 2006. In the Russian Federation substantial resources were dedicated to employing and training new staff to build their competence to review financial reporting. However, less than three years late, it became evident that new reporting is too burdensome and unnecessary for both government and NCOs. New reporting did not help the government to discover any new wrongdoings by NCOs, but created a base for mass violations of the new legislation: many NCOs failed to submit new complex reports because of the lack of capacity, and the MOJ violated the law, by not bringing charges (likely!) against violators. Over 60% of Russian NCOs should have been liquidated according to the NCO law, because they failed to submit reports. In 2009 changes were made into Russian NCO law[20], resulting in exemption of over 70% of NCOs. Reporting requirements for other NCOs were simplified by the Russian MoJ in 2010[21].

Recommendations

Belarus government has opportunity not to repeat mistake of the Russian government. We recommend eliminating this new reporting requirement from the text of the Draft NCO Law.

4. Unnecessary re-registration of NCOs.

According to assessment of Belorussian experts, adoption of the daft NCO Law will have negative implications of the entire NCO sector in Belarus. The majority of Belorussian NCOs will be required to apply for re-registration due to the need to bring their by-laws in compliance with the new NCO Law, within one year since the enactment of the NCO law. If they fail to do so, they will be subject to liquidation. Taking into account that registration procedure in Belarus is extremely complex and allows for a broad discretion to decide whether to register an NCO, chances are high that the government will use re-registration process at a mean to eliminate «unpopular» with the government NCOs.

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[20] Article 31.3(1) of the Russian Federal Law on Non-commercial Organizations.

[21] Order of the MoJ of Russian Federation dd. March 29, 2010 on Approving Forms of Reports for NCOs.

PROPOSALS ON THE DRAFT OF THE LAW OF THE REPUBLIC OF BELARUS «ON NON-COMMERCIAL ORGANIZATIONS»

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Draft of the Law of the Republic of Belarus «On Non-commercial Organizations» (hereinafter – Draft) is aimed at improving legal regulation of social relations in the sphere of establishment and operation of non-commercial organizations and unifying legislation regulating social relations in the sphere of establishment and operation of non-commercial organizations.

Analysis of the Draft shows that, despite some positive innovations, its adoption in the existing version[1] could lead to even more restrictions on activities of non-commercial organizations. While current Belarusian legislation in respect of non-commercial organizations even without the proposed Draft already severely limits the process of establishment and activities of non-commercial organizations, many of its provisions being contrary to constitutional norms and international obligations of the Republic of Belarus.

In order to improve the legislation on non-commercial organizations (hereinafter referred to in this material as NCO) in the Republic of Belarus the Educational Institution «Legal Transformation Centre» has prepared and presents for your attention most problematic aspects of the Draft «On Non-commercial Organizations» outlined by us, as well as proposals for their elimination.

1. Introduction of the principle of registration upon permission for every legal organizational types of non-commercial organizations.

International standards in the field of legal regulation of non-commercial organizations provide that the process of registration and activities of non-commercial organizations should not be more complicated than that for commercial organizations.[2] In 2009 Belarusian legislation went on the progressive route introducing the principle of registration upon application for all business entities, as well as a number of non-commercial organizations: institutions, unions (associations) and consumer cooperatives. Rather than continue the good practice, the Draft provides for a regressive position – spreading the principle of registration upon permission currently applied to public associations, their unions (associations), funds, institutions and unions (associations).

The Draft nearly doubles the existing norms of the Law of the Republic of Belarus «On Public Associations» with respect to the registration procedure, which according to international and Belarusian experts in the field of freedom of associations is a complicated and time consuming process containing a broad list of documents required for registration of the organization, as well as the grounds for refusal in registration, which allow to make a decision to

refuse registration for any minor reason. Thus, the provisions of the Draft in the proposed version do not conform to international standards in the field of legal regulation of non-commercial organizations, make the process of registering NCOs difficult and time consuming, discriminate against the Belarusian non-commercial organizations compared with Belarusian business organizations.

1. Proposals:

1.1. To extend the principle of registration upon application (the procedure provided for by Decree of the President of the Republic of Belarus «On State Registration and Liquidation (Termination of Activity) of Business Entities» № 1 dated January 16, 2009) to all non-commercial organizations, including public associations and funds.

1.2. Provide for in the Draft that in case of state non-registration the registering authority must inform the founder (founders) about all specific grounds that served as a reason for non-registration of the organization.

2. Provisions on the location of the non-commercial organization, its legal address.

Article 7 of the Draft provides that the location of the NCO is determined by location of its permanent executive body, in the absence of a permanent executive body – of a body or person authorized to act on behalf of a legal entity without a power of attorney. At the same time Art. 27 of the Draft requires from NCOs to submit among other documents for state registration a document confirming its legal address. Provisions of the Draft, as well as other normative acts of the Republic of Belarus do not imply differences between the two concepts of «location of the organization» and «legal address». Without defining the concept «legal address» the law provides for the need to present a document confirming this address.

As indicated above, legislation on non-commercial organizations must not impair the conditions of activities of the latter in comparison with commercial organizations. Decree of the President of the Republic of Belarus «On State Registration and Liquidation (Termination of Activity) of business entities» № 1 dated January 16, 2009 provides for the possibility of establishing a commercial organization – unitary enterprise at the residence of the founder. In our view, the adoption of the law on non-commercial organizations can serve as a basis for introducing opportunities for non-commercial organizations to have their location (legal address) at the residence of the founder (owner of property, participant, member).

In European countries authorities do not require to provide a document confirming location of a non-commercial organization during its registration. European legislation provides obligation of NCOs to file to the registering

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[1] *Version of the Law based on which the analysis was made is attached.*

[2] *Article 7 of Recommendations CM/Rec(2007)14 of the Committee of Ministers of the member-states on the legal status of non-commercial organizations in Europe (Adopted by the Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers' Deputies).*

authority a valid address at which state authorities can contact the NCO, as well as the obligation to promptly notify state authorities about its change.

2. Proposals:

2.1. Not to differentiate the terms «location of the NCO» and «legal address of the NCO».

2.2. Provide in the Draft a possibility to establish NCO at the residence of the founder (owner of property, participant, member).

2.3. Provide for an obligation of the NCO to notify the registration authority of the location without presenting a separate document, as well as on change of its location in the notification procedure.

3. Provisions on obligatory state registration of non-commercial organizations.

Article 27 of the Draft provides that a non-commercial organization is subject to obligatory registration.

In our view, adoption of the law on the non-commercial organizations may serve as grounds for removal from the legislation of the ban on activities of unregistered NCOs. The ban on activities of unregistered organizations contradicts to constitutional norms and international obligations of the Republic of Belarus. Such a ban does not comply with the positive European practice, and apart from our country exists only in countries such as Kazakhstan, Uzbekistan and Turkmenistan.

3. Proposals:

3.1. Use the Law of the Republic of Belarus «On Non-commercial Organizations» for raising the ban on activities of unregistered civil society organizations. To add a provision stating that citizens' associations (public groups) are not subject to obligatory registration, to remove from the Draft a provision stating that NCOs are subject to obligatory registration.

Add the Criminal Code (Art. 193.1) to the list of normative acts which are supposed to be amended in connection with adoption of the Law «On Non-commercial Organizations».

4. Existence in the Draft of the provisions on the possible denial in state registration of NCOs and recognition of the state registration as invalid.

Current legislation provides for the possibility of the registering authority to adopt decision to refuse to register such legal forms of NCOs as public associations, their unions, religious organizations, foundations. At the same time for such legal forms of NCOs, as institutions and unions (associations) current legislation provides for the possibility of recognizing state registration as invalid. When registering an organization upon the principle of application founders themselves shall be responsible for the authenticity of documents submitted for registration. Since the registering authority is not empowered to verify the documents submitted for registration, except for their packaging and compliance with formal requirements, therefore, in the case of subsequent discovery of false information a process of invalidation may be initiated. When

the registration process is carried out upon permissive principle and lasts for a month, the registering authority can verify the documents, including the reliability of the information contained therein. Thus, there is no need to jointly introduce into the law provisions on the possible denial in state registration and recognition of state registration as invalid.

4. Proposals:

4.1. To exclude from the Draft a provision on the possibility of making the decision to refuse in registration upon a wide range of grounds (Article 29), securing the possibility of failure to make registration on the basis of formal reasons: failure to submit all documents required by law or providing documents to the wrong body.

5. Restricting the right of a person to be a founder of an institution.

The Draft (Article 15) provides a restriction for persons acting as property owners of a private institution. Thus, the founder cannot be:

- a natural or legal person, which was the founder of a non-commercial organization dissolved in court in connection with gross or repeated violations of legislation;
- a citizen of the Republic of Belarus, which has outstanding or unwithdrawn conviction for intentional crimes;
- a foreign citizen or a stateless person convicted in the Republic of Belarus or any other state for committing an intentional crime established in accordance with the Criminal Code of the Republic of Belarus and not having conviction withdrawn or expunged.

In our view, these restrictions seem excessive and unreasonable, contrary to constitutional norms of the Republic of Belarus: restriction of rights and freedoms of a person shall be permitted only in cases stipulated by law, in the interests of national security, public order, protection of morality, public health, rights and freedoms of others.

A special surprise is part 1 of this article. The theory of law is based on the fact that a sanction (punishment) should be proportionate to the crime. An act is viewed as a violation only if this act is a manifest of the will of a person who committed it. In this case a breach of those principles is evident. The founders may withdraw their membership in organization, not participate in its management, as well as in some cases just do not have any relations to the organization. Violations in the organization can happen without fault of the founder, for example, as a result of management's actions, while, on the basis of the provision in question, the founder should bear responsibility for such acts. In addition, the fact that the organization is dissolved in court is sufficient punishment for the founder. The provision also does not establish terms of limitation of the right of a person to be a founder of an institution.

In addition, the above indicated paragraph 1 and paragraph 2 may significantly limit the rights of foreign citizens to establish institutions because it is not clear how they would prove the fact that they were not founders of any non-commercial organizations, liquidated by court order, or have no unwithdrawn/ outstanding convictions in another state for committing an intentional crime.

5. Proposals:

5.1. To exclude from the Draft a provision on limitation of rights of the founder to be the property owner (founder) of an institution.

6. Non-specific provisions regarding the subjects having the right to form unions (associations)

According to Article 46 of the Civil Code of the Republic of Belarus, establishment of associations of commercial organizations and (or) individual entrepreneurs, as well as associations of commercial organizations and (or) non-commercial organizations in the form of associations and unions is allowed. Thus the Civil Code provides for the right of commercial and non-commercial organizations to form unions (associations).

Art. 4 of the Draft also provides for such a legal organizational form of a legal entity as an association of legal entities and (or) individual entrepreneurs. At the same time Art. 16 of the Draft talks about the possibility of unification of commercial organizations and (or) individual entrepreneurs; public and other non-commercial organizations; unions in the form of associations of local Councils of Deputies. This dual approach will lead to serious confusion in law enforcement.

6. Proposals:

6.1. To clearly define in the Draft a provision on the possibility of unification of commercial and non-commercial organizations and (or) individual entrepreneurs in the form of a union (association).

7. Existence of a provision on the need for approval of placement of a branch and (or) representative office on the territory of an administrative-territorial unit with the local executive and administrative body.

Such a clause provides extremely broad opportunities for local executive and administrative bodies to give permission to open a branch or a representative office of an organization on the territory of an administrative-territorial unit. The clause does not provide any information neither on what criteria the local executive and administrative bodies will produce this approval, nor on what basis such approval may be denied.

7. Proposals:

7.1. To provide in the Draft an obligatory notification of local executive and administrative bodies on the placement of a branch and (or) a representative office on the territory of an administrative-territorial unit.

8. Entrepreneurial activity of public associations.

Art. 31 of the Draft provides that NCOs can perform entrepreneurial activities only insofar as it serves the purposes for which it was created. This is provision is progressive, as it contains no restrictions for any organizational legal forms of non-commercial organizations to be engaged in entrepreneurial activities on their own. Besides that, restriction of entrepreneurial activities depending on the purpose of the NCO is fully justified. At the same time, existing

legislation (Law of the Republic of Belarus «On Public Associations») provides an opportunity for NCOs to carry out entrepreneurial activity only through the formation of business organizations or participation therein.

8. Proposals:

8.1. To include in the list of normative acts to be amended in connection with adoption of the law «On Non-commercial Organizations» the Law of the Republic of Belarus «On Public Associations «. To delete from Art. 20 of the Law of the Republic of Belarus «On Public Associations» provision limiting the right of a public association to be engaged in entrepreneurial activities through establishment of commercial organizations or participation therein.

9. Introduction of additional reporting for NCO, as well as extension of competence of the Ministry of Justice with regard to control of NCO.

Reporting requirements and powers of the registering authority to control NCO activities proposed in the Draft are excessive and inconsistent with normal international practice.

There is a wide list of information already identified in the current legislation regarding funds and associations that should be submitted to the registering authority. The Draft expands this list and requires submitting additional documents to the registering authority. The obligation to provide a report on activities of an organization, composition of governing bodies, as well as on the expenditure of funds and the use of other property, including those received from international and foreign organizations, foreign citizens and stateless persons falls on all non-commercial organizations, regardless of whether they are created on the basis of membership or on the basis of the property.

Reporting to the company and competent authorities is a definite responsibility of NCOs. However, the requirements established by law, must be proportionate to the privileges the organization receives from the state (tax incentives, government funding, etc.). Almost all European countries do not have any mandatory reporting on program and financial activities that would be extended to all NCOs. Provision on the possibility of sending representatives of registration authorities to all events carried out by NCOs without limitations is also contrary to usual international practice.

The Draft does not approve the form and timing of reporting, giving the Ministry of Justice authority to approve them. The existence of such referential rule creates an additional danger of imposing too complicated reporting that may not be feasible for a large number of NCOs.

The Draft also provides wide opportunities to inspect activities of the organization, without providing any procedures to protect the interests of the organizations. Regulation of inspections allows organizations to protect their rights, and inspection bodies- to more directly and efficiently carry out inspections. There is a fairly good practice of regulating inspections carried out by authorities other than registering in Belarus. This practice should be extended to inspections of NCO by their registering authorities.

9. Proposals:

9.1. To simplify reporting for non-commercial organizations, to narrow the list of information needed to be provided by NCOs to the registering authorities. The need to provide reports should be correlated with the organization's budget, preferences granted by the state, the order of formation of the organization's property.

To exclude from the Draft a requirement for NCO to «submit to the registering authority documents containing a report on its activities, composition of governing bodies, as well as documents on the expenditure of funds and the use of other property, including those received from international and foreign organizations, foreign citizens and stateless persons», as well as provision on the right of the registering authority to send its representatives for participation in NCOs activities.

9.2. To specify the terms of submitting reports of NCOs directly in the Draft, as well as all information to be contained in the report, or approve the form of reporting directly by the Draft.

9.3. To regulate the procedure for conducting inspections of non-commercial organizations by registering authorities. A reference rule on legislative act containing such an order should be provided in the Draft.

10. Absence of a full list of statutory acts that should be amended due to adoption of the Draft.

A lot of problems may arise after adoption of the Law with applying different rules governing the same relationships. The Draft prescribes that the Council of Ministers within six months after official publication of the law shall bring acts of legislation in accordance with the law. However, the Draft itself speaks about the necessity to introduce amendments only into certain laws of the Republic of Belarus and does not contain a full list of legislative acts, as well as their specific rules, that should be amended in connection with the adoption of the Draft. Such approach will complicate the process of bringing legislation in line with the provisions of the Draft, and, respectively, law enforcement practice.

Proposals:

10.1. To adopt the Draft together with amendments to all legislative acts that should be brought in line with the Draft.

It should be noted that along with the problematic moments the Draft contains a number of positive amendments in the legal regulation of non-commercial organizations:

1) introduction of a status of social significance organization
2) introduction of basics of the concept of a state social order
3) creation of public councils under state bodies (formalized in legislation on NCOs)

However, in our opinion, in order to ensure that these norms are further consolidated in legislation and law enforcement, it should be specified in the final clauses of the Draft which new legislative acts should be elaborated in connection with the introduction of these amendments.

THE CONSOLIDATED POSITION OF CIVIL SOCIETY ORGANIZATIONS: COLLECTIVE APPEAL TO THE PARLIAMENT AND GOVERNMENT ON THE DRAFT LAW OF THE REPUBLIC OF BELARUS «ON NONCOMMERCIAL ORGANIZATIONS»

March 9, 2011

Council of Ministers of the
Republic of Belarus,
Minsk 220010, Sovetskaya str. 11,
the House of Government

House of Representatives of the
National Assembly of the Republic of Belarus
Minsk 220010, Sovetskaya str. 11,
the House of Government

Collective Appeal regarding the draft Law «On Noncommercial Organizations»

At the moment, elaboration of the draft Law «On Noncommercial Organizations» is taking place in Belarus. The new legal act will affect the interests of thousands of non-commercial organizations (NCOs) operating in Belarus, it will determine the legal conditions for the further development of Belarusian civil society.

We, representatives of Belarusian NCOs of different organizational legal forms and activities, as well as of institutions uniting NCOs believe it is necessary to take into account public interest and opinion while working on the legal act mentioned above. On the basis of existing proposals, comments and expert opinions received from a number of national and international NCOs (International Education Public Association «ACT», Educational Institution «Legal Transformation Center», International Center for Not-for-profit Law, etc.), Belarusian civil society organizations agreed on a common approach to the content of the draft Law «On Noncommercial Organizations». With this Statement, we inform the authorities involved in the work on the draft Law about the existence of the proposals regarding the fundamental standards of the future legal act, agreed on by a large number of Belarusian NCOs.

The reason for the development of a consolidated position of NCOs, as reflected in this Statement, became the text of the Draft Law obtained by a number of NCOs in December 2010.

In particular, we have made the following comments on the contents of the draft Law of the Republic of Belarus «On Noncommercial Organizations»:

1. The draft law extends permission-based state registration, which is currently being applied in case of registering funds, public associations and their unions, to institutions and associations (unions). Such a complication of the registration procedure for NCOs which are being registered based on

application is unreasonable. Belarusian civil society requires promotion, rather than reduction of the application-based NCO registration process. Apart from that, the proposed in the draft law provisions on the registration of these kinds of NCOs contradict the provisions of the President's Decree № 1 «On State Registration and Liquidation (Termination of Activity)» from 16.01.2009. International standards in the field of NCO legal regulation also state that the process of non-commercial organizations' registration should not be more complicated than that for commercial organizations.

Establishment of a single way of registration for both commercial and noncommercial entities, will contribute to their work for the benefit of society on an equal footing. We consider it necessary to abandon the idea of implementing the complex and time-consuming permission-based process of registration of all forms of NCOs, proposed in the draft bill. In order to develop Belarusian civil society, we deem it necessary to extend the application-based way of registration similar to the one established by the President's Decree № 1 from 16.01.2009, to NCOs of all legal forms.

2. The draft law provisions defining the location of the NCO office, contradict interest of NCOs. We consider it necessary to secure NCOs with the right to obtain a registration address at the residence of their founders (owners of the property, NCO members), as required by law for certain business entities (private unitary enterprises).

We'd also like to stress the irrationality of the existing requirement for NCOs' agencies, which are not endowed with legal personality, to have a legal address registered in non-residential premises.

3. The existence of criminal liability for the activities of some kinds of NCOs not possessing state registration, is a factor which is holding back civil society development in Belarus. This legal provision does not meet international standards and is one of the reasons for Belarus to be criticized by the United Nations and other international organizations.

We believe that working on the draft Law «On Noncommercial Organizations» is a good opportunity to eliminate that provision from Belarusian legislation. For this purpose, it would be reasonable to implement in the Law a provision regarding public associatios which are not legal entities and, accordingly, are not subject to state registration. We also believe it is necessary to add the Criminal Code of the Republic of Belarus, from which Article 193^1 should be deleted, to the list of legal acts, which are supposed to be amended in connection with the adoption of the Law «On Noncommercial Organizations».

4. Establishment of additional forms of accountability and control for NCOs specified in the draft law requires special attention. At the moment, NCO activities are fully controlled by the State in the frames of the system of general control and supervision over the activities of economic entities. The existing system of control over the activities of public associations and funds is cumbersome, bureaucratic and inconsistent with the state strategy of de-bureaucratization, including the provisions of the Direction «On measures for further de-bureaucratization of the state bodies» from December 27, 2006, № 2. In this regard, we believe that this control system is inappropriate for other organizational and legal forms of NCOs.

We propose to cut down the list of information required to be specified in the reports of NCOs, leaving the expanded reporting and enhanced control only in respect of NCOs-recipients of state funding or other state support. We also suggest to specify in the law deadlines for report submissions and the ways of conducting NCO audits by registration bodies.

5. We see the draft law proposition to determine the categories of persons who don't have right to establish NCO in the form of institution, as an ungrounded restrictive measure which contradicts the principles of equality of citizens, as well as Articles 13 and 23 of the Constitution of the Republic of Belarus. The fact that this restriction extends on individuals, who had acted as the founders of NCOs later liquidated by court in connection with serious or repeated violations of the laws, seems to be of particular concern. In this case, the developers of the project are actually introducing the principle of collective guilt, for example with respect to the founders of public associations, as well as promote responsibility for the actions of other persons, like for those of the founders of a public association after they had left it.

We consider introduction of such irrational and unconstitutional legal provisions unacceptable.

6. If the vital interests of Belarusian NCOs regarding these issues are not considered, the effectiveness of civil society work will be under threat. If the above mentioned provisions are included in the new Law without any changes, those few positive propositions included in the draft law will not have any significant effect. We believe that while elaborating the Law «On Noncommercial Organizations», the legislator should focus more not on restrictive and control standards, but rather on the positive provisions that promote the development of NCOs: those concerning the establishment of public councils under the state bodies, the development of the state social order and granting status of social significance to civic organizations. In our opinion, these provisions create a favorable climate for NCOs, that's why they should become the core principles of the new law. As regards the provisions on the establishment and registration of NCOs, these issues are already adequately regulated by the Civil Code of the Republic of Belarus and other legislative acts, so the draft law provisions on these issues just create an unnecessary dual regulation, duplicating existing standards.

We consider it expedient to leave and expand only those norms in the Law of the Republic of Belarus «On Noncommercial Organizations»which are not regulated by other legislative acts, such as provisions regarding social order and organizations of social significance.

7. In addition to the indicated problems, several NCOs made a number of other comments to the draft Law, which, in our opinion, should be considered by legislators when working on the draft. In particular, it was offered:

- To fill gaps in the legal regulation of NCO work, including such issues as NCO business activities, procedure and grounds for refusal of NCO registration, establishment of unions between NCOs and commercial organizations and (or) individual entrepreneurs, the creation of NCO

offices and agencies (education institution «Legal Transformation Center»);

- To develop the concept of social order and of granting the status of social significance to organizations (international education public association «ACT»);
- To regulate the receipt of charitable assistance by NCOs and the provision of benefits to organizations that provide such assistance (international public organization «Understanding»);
- To regulate, apart from the work of community councils, other promising forms of cooperation between government agencies and NCOs, such as, for instance, public hearings (public association «Ecohome»);
- To regulate the procedure of the changing the founder of an institution (establishment «Center of Environmental Solutions»);
- To embody in the Law the concept of «public association of persons with disabilities» (public association «Belarusian Society of the Handicapped», Public Association public association «National Association of Wheelchair Users»);
- To regulate several issues concerning religious organizations.

We note that the discussion of the draft law with the NCOs carried out by the Ministry of Justice had a formal character and didn't involve all stakeholders. The text of the draft law has not yet been published, the project developers have not presented its official version to the public. Thus, the project contains numerous flaws and doesn't take into consideration the interests of the public. However, we hope that during the next stages of the draft law elaboration, these shortcomings will be elimintaed, including through the involvement of interested NCOs in the discussion of the draft.

We call upon the Law developers who are to elaborate and adopt the Law «On Noncommercial Organizations» to consider our suggestions as a common opinion of the civil society organizations interested in creating an enabling legal environment for NCO activities for the benefit of Belarus and the Belarusians.

Also, for full public involvement in the work on discussing and improving the draft bill, we urge authorities to arrange respective public discussions open for all interested NCOs, including the conduction of the parliamentary hearings on the legal regulation of NCOs in Belarus before the first reading of the bill. We kindly ask the authorities to invite all NCO representatives, who have signed this Statement, to the public discussions of the draft law.

Truly yours,
Representatives of Belarusian NCOs

1. Educational Institution «Legal Transformation Centre».
2. Public Association «Education Center «POST».
3. Local Cultural Foundation «Tradition».
4. Institution «Center of Ecological Solutions».
5. International Charity Association «See with your Heart».
6. Public Association «Land Reform».
7. Republican Youth Public Association «Next Stop—New Life».
8. International Public Association «Gender Perspectives».
9. Public Association «Belarusian Association of Young Christian Women».
10. Public Association «Radislava».
11. Republican Youth Public Association «Meeting».
12. Republican Public Association «Belarusian School Society».
13. Republican Public Association «Belarusian Union of Designers».
14. Republican Public Association «Belarusian Women's League».
15. Public Association «Protection of Birds «Batskaushchyna».
16. Republican Public Association «Analytical Center «Strategy».
17. Republican Public Association «World for All».
18. United Civil Party.
19. Public Association «Frantsishak Skaryna Belarusian Language Society».
20. Belarusian Free Trade Union.
21. Public Association «Special World».
22. Belarusian Youth Public Association «New Faces».
23. International Public Association «Social Support».
24. Public Charity Organization «The Drop of Life».
25. Social and Cultural Institution «Regional Bureau of Peace and Development Strategy».
26. Information-consulting Establishment «Socio-Economic Transformation».
27. Public Association of the Mahilyow Region Enterpreneurs.
28. City Women's Socio-Educational Public Association «Mona».
29. Enlightening Public Association «Leu Sapieha Foundation».
30. Research and Scientific Institution Analytical Group «Center for European Transformation».
31. Public Association «Center for Social Innovations».
32. Zhytkavichy branch of the public organization «BelAPDIiMI».
33. Homel Youth Historic Organization «Talaka».
34. Youth Education Center «Fialta».
35. Education and Human Rights Institution «Office on the Rights of the Disabled».
36. Public Association «Belarusian Association of Journalists».
37. Public association «BPF «Adradzhenne».
38. City Public Association «Center «Supolnasc».
39. Belarusian Left-Wing Party «Fair World».
40. Public Association «Discussion and Analytical Society «Liberal Club».

41. Human Rights and Education Public Association «Movement «For Freedom».
42. Establishment «Centre for Support of Regional Initiatives».
43. BPF Party.
44. Republican Human Rights Public Association «Belarusian Helsinki Committee».
45. Public Association for Belarusian-Russian Integration Encouragement «Together».
46. Education club «CinemaBunker».
47. Youth Public Association «Education Without Boundaries.
48. Public Association «Centre for Informational Support of Public Initiatives «The Third Sector».
49. Public Association «Christian Union of the Old and the Young».
50. Youth Public Association «ABC of Enterpreneurship».
51. Public Association «Human Rights Center».
52. Public Associaton «National Association of Wheelchair Users».
53. Public Associaton «Belarusian Society of the Handicapped».
54. Public Association «Belarusian Organization of Working Women».
55. Republican Socio-Educational Public Association «Domovladenie».
56. Research and Education Establishment «Center for European Studies».
57. Public Association «Defence of Fathers' and Children's Rights».
58. Youth Public Association «Falanster».
59. Youth Sport Public Association «Extreme Group».
60. International Association of Real Estate Management.
61. Establishment «Editorial office of the «ARCHE-the Beginning» magazine».
62. Information-Consulting Establishment «Agency of Regional Development «Dzedzich».
63. Enlightening Public Association «Movement for the Future».
64. Republican Public Association «Belarusian PEN-Centre».
65. Belarusian Trade Union of Workers of Radio and Electronics Industry (REP).
66. Public association «Dyiaryush».
67. Republican Public Association «Lenin's communist Belorussian youth union».
68. Trade Union Association «Belarusian Congress Of Democratic Trade Unions» (BKDP).
69. International Public Association «Good Will».
70. Public Association «EcoHome».
71. Public Association «Women for the Revival of the Narach Region».
72. Minsk Office of the International Public Association of Ecologists.
73. International Public Association «EcoSphere».
74. International Humanitarian-Educational Foundation «Living Partnership».
75. Association for Supplementary Education.
76. International Public Association «EcoProject Partnership».

77. Republican Public Association of Psychological Support «Awakening».
78. Public Association «Mahilou human rights centre».
79. Mahilou City Charitable Organization «Response».
80. Private Culture and Education Establishment «Mahilou Youth Centre».
81. Association of Legal Persons «Republican Confederation of Enterpreneurship».
82. Public Association «Open Society».
83. Republican Public Association «Legal Initiative».
84. Culture and Education Establishment «Centre «Ekumena».
85. Public Association «Belarusian Voluntary Society of the History and Culture Monuments' Protection».
86. International Public Association «World Association of Belarusians «Baćkaŭščyna».
87. National Public Youth Association «Civic Forum».
88. Ecology and history Public Association «Nerush».
89. Public Association «History Society of the Symbolic Work with Stone».
90. Homel Public Association «Social Projects».
91. Pastavy Regional Public Association «EcoAgroTour».
92. Culture and Education Establishment «Centre for Social Initiatives «New Society».
93. Viciebsk Public Association «Self-governance and Society».
94. Public Association «Culture and Sport Club for the Disabled «Prometheus».
95. Belarusian Public Association of Commercial Lawyers.
96. Institution «Youth Information and Documentation Center».
97. Religious Community «International Society for Krishna Consciousness», Minsk.
98. Public Association «Business- and Creative Women's Cooperation».
99. Mozyr City Charitable Public Association «Children's Diabetes».
100. Public Association «Yazep Drazdovich Culture and Edication Center».
101. Public Association for the Protection of Animals «Zooprotection».
102. Vorsha City Organization of the Republican Public Association «Frantsishak Skaryna Belarusian Language Society».
103. Vorsha Youth Public Association «Zviaz».
104. Republican Public Association «Belarusian society of People Living with HIV».
105. Private Education Establishment «European Youth Business Initiative».
106. Editorial and Publishing Institution «Verasnianka».
107. Verhniadzvinsk Region Public Association of Large Families «Family».
108. Belarusian Independent Trade Union of Miners, Chemists, Oil-refiners, Transport Workers, Builders and Other Workers.
109. Pubic Association «Belarusian Committee «Chernobyl Children».
110. Youth Public Association «Historyka».
111. Public Association «Children's Fund for Spiritual and Cultural Revival «Sakavik».
112. Association of Proprietors «Magistral-7».

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